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2009



Status Report
of the
Auditor General of Canada
to the House of Commons

Message from the Auditor General of Canada Main Points—Chapters 1 to 5 Appendix





2009





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Message from the Auditor General of Canada Main Points—Chapters 1 to 5 Appendix The 2009 Status Report of the Auditor General of Canada comprises a Message from the Auditor General of Canada, Main Points—Chapters 1 to 5, an appendix, and five chapters. The main table of contents for the Report is found at the end of this publication.

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To the Honourable Speaker of the House of Commons:

I have the honour to transmit herewith this Status Report of 2009 to the House of Commons, which is to be laid before the House in accordance with the provisions of subsection 7(5) of the *Auditor General Act*.

Therea Frances

Sheila Fraser, FCA Auditor General of Canada



Message from the Auditor General of Canada Status Report 2009

Message from the Auditor General— Status Report 2009



Sheila Fraser, FCA Auditor General of Canada

The Status Report tabled today revisits seven issues that have been discussed in my recent reports or those of the Commissioner of the Environment and Sustainable Development. Status reports are tabled once a year and are a way for us to find out—and for parliamentarians to assess—whether government organizations are meeting commitments they made in response to our previous recommendations. In doing so, we re-audit selected recommendations and findings from prior reports to determine if progress in addressing them has been satisfactory. When we make that determination, we consider the time elapsed since our original report and the complexity and degree of difficulty of remedial action by government.

I am pleased to report that of the seven topics revisited this year, we found satisfactory progress in five.

Satisfactory progress

Passport Services

Our follow-up focused on Passport Canada's progress in preparing for any rise in the volume of passport applications leading up to 1 June 2009, when the US requirement for a passport will extend to Canadians entering the United States by land or sea. In 2007, the first phase of the United States Western Hemisphere Travel Initiative required Canadians to carry a passport when crossing into the US by air. This triggered an overwhelming increase in passport applications, resulting in delays and increased waiting times for a passport. The Standing Committee on Public Accounts issued a report that criticized the Agency's planning for the surge in applications and asked for a plan detailing how Passport Canada would prepare for the next phase in 2009.

We found that Passport Canada has developed an extensive response to better prepare itself for increasing demands. It carried out two "lessons learned" exercises, through which it determined the root causes of problems experienced in 2007, and it identified improvements to address them. It opened a new processing and printing centre for mail-in applications and took steps to streamline the processing of walk-in applications. It developed a contingency plan with specific actions to be triggered by changes such as excessive line-ups or delays in standard turnaround times.

Passport Canada also launched a major campaign to encourage Canadians to apply for passports well before the US deadline and spread out the demand over a longer period. Whether this effort is successful and whether Canadians heed the Agency's advice remains to be seen.

National Security: Intelligence and Information Sharing

Security intelligence is the collection, analysis, and interpretation of all information used to inform a government about activities that may threaten the country's security. Certain federal departments and agencies are involved in the collection of information, while others use it to deliver their programs or enforce the law. Because of the powers of agencies and departments involved in intelligence gathering and law enforcement, there are also organizations that review and publicly report their findings on the activities of these security and intelligence agencies.

For Canadians to have confidence in security and intelligence organizations, they need to know that the government maintains a balance between protecting the privacy of citizens and ensuring national security. The challenges to security posed by such events as G-8 summit meetings and the upcoming 2010 Olympics in Vancouver underline the need for adequate management of intelligence activities.

Our audit in 2004 found that intelligence management across the government was deficient in many areas, from setting intelligence priorities to coordinating and sharing information between departments and agencies.

In this Status Report, our examination of the progress made by 14 departments and agencies and three review organizations tells a story of uneven progress. For example, the federal government has taken measures to improve the reliability of watch lists of individuals considered of interest to intelligence organizations. The government reduced its fingerprint backlog and is progressing in its development of a computerized system to analyse digitized fingerprints. We also found progress in the organization and coordination of priorities among federal departments and agencies involved in security.

However, much work remains. Transport Canada and the RCMP are still not sharing criminal intelligence information effectively. As a result, Transport Canada could still be allowing high-risk individuals with criminal records to be cleared for access to restricted areas at airports. In addition, at the time of our audit, security and intelligence

agencies were still not undergoing a level of independent review proportionate to their intrusion into peoples' lives.

Treaty Land Entitlement Obligations

Treaty land entitlement agreements are modern legal commitments that recognize the government's failure to comply with century-old treaty obligations. These agreements provide First Nations with the right to select Crown land or with funds to buy private land or both. The lands are then converted to reserve status. Indian and Northern Affairs Canada (INAC) is responsible for managing the implementation of these agreements on behalf of the federal government.

Our 2005 audit found limited progress in converting to reserve status the large number of acres selected in Saskatchewan and Manitoba. First Nations of those provinces are among the most impoverished in Canada and acquiring land could serve as a means of improving their standard of living.

In this follow-up audit, we found that since 2005, INAC has converted more than 315,000 acres to reserves in Manitoba and Saskatchewan, an increase of 42 percent. In both provinces, the Department has also made satisfactory progress in working more closely with First Nations on plans to convert their outstanding selections of land. It also increased its efforts to coordinate environmental assessments and land surveys of selected land and it made efforts to improve its capture and processing of data.

But we also identified weaknesses in the way INAC manages these land entitlement obligations. Without sustained attention to correct them, the Department risks being unable to sustain its progress in converting selected land to reserve status.

The two other chapters in which we report satisfactory progress are part of the Commissioner's report, also being tabled today.

Safety of Drinking Water

Although the safety of drinking water is a shared responsibility, the federal government plays an important role by developing guidelines on water quality, which the provinces and territories can use in regulating water within their jurisdictions. The federally issued guidelines are science-based and set important criteria for water quality.

Our audit examined federal progress toward implementing our recommendations from 2005, when we reported that Health Canada

was slow to develop and review the guidelines. At the time, there was a backlog of about 50 guidelines that needed to be reviewed and, if necessary, updated to reflect current science. We are pleased to report that the Department now has a process in place to set priorities with plans and timelines for regularly updating the Guidelines for Canadian Drinking Water Quality and to produce new guidelines as appropriate. It has also addressed the backlog of old guidelines in need of review.

In 2005, we had also found gaps in Health Canada's approach to monitoring the safety of drinking water on federally regulated public transportation. This time, we found that Health Canada has resumed routine inspection of drinking water on passenger aircraft belonging to the major Canadian airlines. However, there are still gaps in its inspection of drinking water on common carriers and facilities that provide the food and beverages that are served onboard.

Air Quality Health Index

An Air Quality Health Index is intended as a tool to give a measure of air quality based on levels of air pollutants known to harm human health. The use of such an index—a snapshot of the air quality at a given location—would alert Canadians not only to high levels of air pollution but also to the potential health effects, allowing them to take appropriate precautions in planning outdoor activities.

At the 2001 Toronto Smog Summit, Environment Canada and Health Canada committed to developing a Canada-wide air quality index based on health risks. They reiterated that commitment in 2002 and 2003 in response to petitions submitted through the Commissioner of the Environment and Sustainable Development. The air quality index to be replaced provides information on air quality but not on potential health effects.

The Commissioner's report notes that Environment Canada and Health Canada have made satisfactory progress on their commitment to develop an air quality health index. The new index is currently being pilot-tested in several locations. When it is fully operating across the country, Canadians will be able to make informed decisions about the health implications of outdoor activities in their specific locations.

Unsatisfactory Progress

The two remaining chapters conclude that the government's progress on our recommendations has been unsatisfactory.

Governor in Council Appointments Process

Governor in Council (GIC) appointees occupy senior positions in Crown corporations and federal agencies, boards, tribunals, commissions, granting councils and departmental corporations. They are appointed by the Governor in Council (the Governor General acting on the advice of Cabinet) on the recommendation of the responsible minister. The Privy Council Office oversees the GIC appointment process.

Problems related to GIC appointments have manifested themselves in several of our audits of federal entities in the last decade. In 1997, we reported on problems with the process of appointing Board members to the Immigration and Refugee Board. In 2000 and 2005, we made specific recommendations to the government about the process of appointments to Crown corporations.

In revisiting these issues, we conclude that while, overall, the government has systems and procedures to provide for the timely appointment of qualified individuals to Crown corporations, small entities, and the Immigration and Refugee Board, results are disappointing. There are still lengthy delays that lead to a high number of vacancies, potentially compromising the effective governance and functioning of these government organizations. In particular, the high number of continuing vacancies on the Immigration and Review Board has contributed significantly to the growing inventory of refugee claims waiting to be heard.

The appointment process and the results are not sufficiently clear. The lack of communication among the Privy Council Office, ministers' offices, the organizations, and appointees has led to considerable dissatisfaction among the individuals and organizations involved.

These issues matter not only because they can compromise the governance of these boards, agencies, and Crown corporations but also because the problems we identified could discourage qualified individuals from accepting appointments or renewals of their terms.

Auditing Small and Medium Enterprises—Canada Revenue Agency

The Canada Revenue Agency has a range of programs aimed at promoting compliance with Canada's tax laws. The Small and Medium Enterprises Program carries out a number of compliance activities, including the Underground Economy Initiative designed to identify unreported income from "hidden" legal transactions. Like illegal activities such as smuggling, drug trafficking, and money laundering, "hidden" legal transactions contribute to the underground economy and deprive the government of revenues to fund programs for all Canadians.

For this Status Report, we followed up on recommendations from our 1999 audit of the Underground Economy Initiative and our 2004 audit of the Small and Medium Enterprises Program.

We found that since our previous audit, the Agency conducted a major review to identify all threats to the tax base. One of the four biggest threats is the underground economy, and the Agency has developed an action plan to address it. It has also taken steps to improve its monitoring of compliance. In addition, the Agency has increased its outreach activities to promote compliance and taxpayer awareness of what the underground economy costs society.

However, the Agency has not made satisfactory progress in assessing the risks of non-compliance and targeting small and medium enterprises to audit for unreported income. It selected a far higher proportion of low-risk files than those rated as high-risk by its own computerized system. About half of its underground economy audits over the past five years did not detect unreported income, and the amount of unreported income that has been detected has remained relatively constant. The Agency's risk assessment systems need to be significantly improved.

The Agency has also made little progress in developing indicators to measure and report the results of the full range of underground economy activities. Despite having committed to do so, it still does not report additional taxes assessed on unreported income separately from other tax adjustments identified by its audit activities.

The Canada Revenue Agency needs to correct these long-standing weaknesses. Non-compliance with tax laws has an impact on the economic and social well-being of all Canadians. Furthermore, businesses that do not report all the income they earn put businesses that do at a competitive disadvantage and cause honest taxpayers to bear the tax load of those who cheat.

I hope that parliamentarians find the information in this report useful in their scrutiny of these important areas of government activity.

Main Points—Chapters 1 to 5





National Security: Intelligence and Information Sharing

Chapter 1

Main Points

What we examined

Security intelligence is the collection, evaluation, analysis, integration, and interpretation of all information used to warn a government about activities that may threaten a country's security. In Canada, the intelligence community consists of several organizations within the federal government, some of which collect information while others use it to deliver their programs or enforce the law. Because of the intrusive powers of agencies and departments involved in intelligence gathering and law enforcement, there are also organizations that review and publicly report their findings on the activities of these security and intelligence agencies.

In 2003, we reported that independent reviews of security and intelligence agencies and their reporting to Parliament varied significantly among agencies. In 2004, we reported that intelligence management across the government was deficient in many areas, from setting priorities for intelligence to coordinating and sharing information between departments and agencies. We also found deficiencies in the assessment of lessons learned following critical incidents, information and communications systems, watch lists, and personnel screening in airports.

For this status report, we examined the progress made since 2004 by 14 departments and agencies in their management and sharing of intelligence information, including the interoperability of their systems to support information sharing.

We also examined three review organizations—the Security Intelligence Review Committee (SIRC), the Commission for Public Complaints against the RCMP, and the Communications Security Establishment Commissioner—to assess the progress made by the government in response to our 2003 recommendation that security and intelligence agencies be subject to levels of external review and reporting that is proportionate to their level of intrusion into the privacy of individuals.

Why it's important

Tragic events such as the Air India disaster in 1985 and the September 2001 terrorist attacks in New York and Washington—and the more recent convictions of individuals in connection with terrorism-related offences—demonstrate the need for effective security intelligence by government organizations. More recently, Justice Dennis O'Connor's reports on the events relating to Maher Arar, as well as the proceedings of the Senate Special Committee and the House of Commons sub-committee on the Anti-terrorism Act, have underlined the need for better intelligence and information sharing between departments and agencies in Canada. The need for adequate management of intelligence activities is even more important in light of the challenges to security posed by events such as G-8 summit meetings and the upcoming 2010 Olympics in Vancouver.

For Canadians to have confidence in their security and intelligence organizations, they need to know that government agencies and departments maintain a balance between protecting the privacy of citizens and ensuring national security. Canadians also need to have confidence that the decisions and activities of intelligence agencies are legal, consistent, and appropriate, and that they are subject to examination by independent review agencies for reporting to their minister or Parliament.

What we found

- The federal government has made satisfactory progress since our 2003 and 2004 audits in implementing our selected recommendations for managing security intelligence. It has taken a number of initiatives to respond to our findings. We found progress in the organization and coordination of priorities among federal departments and agencies involved in security. The government also reduced the fingerprint backlog and is progressing in its development of a computerized system to analyze digitized fingerprints. It also took measures to improve the reliability of watch lists of individuals considered to be of interest to intelligence organizations. In other areas, there was either little or no progress or it was slow.
- Transport Canada and the Royal Canadian Mounted Police (RCMP) are still not sharing criminal intelligence information effectively.
 While Transport Canada has implemented additional procedures, the process does not access all data in the RCMP information management systems. In addition, the memorandum of understanding between the RCMP and Transport Canada regarding information sharing was terminated by the RCMP on 31 December 2007 as it no longer complied with ministerial direction or with the recommendations of the Commission of Inquiry into the

Actions of Canadian Officials in Relation to Maher Arar. Transport Canada may still be allowing high-risk individuals with criminal links to be cleared for access to restricted areas at airports.

- Since our 2003 audit, the government has assessed the level of review to which security and intelligence agencies are subject, and it is considering options for the future. However, at the time of this audit, the extent of independent review was still disproportionate to the level of intrusion these agencies may have into people's lives. As illustrated in recent testimony and reports by commissions of inquiry, the situation remains unchanged since our 2003 audit.
- We noted 16 cases, some reported more than once, where departments and agencies have reported legal barriers to information sharing. The Department of Justice Canada has not completed its research on how to manage the balance between the legal requirements for protecting the privacy of individuals and those for maintaining the security of the nation. As we also noted in our 2004 chapter, this has led to poor sharing of information among government departments. Progress, if any, has been slow since our 2004 audit.
- The development of a government-wide communications system at the secret level has progressed to the stage of limited implementation. However, it is over budget and behind schedule. While the system's future success depends on whether additional funding is obtained and whether its targeted users will adopt it, Public Safety Canada and the Treasury Board of Canada Secretariat remain confident.

The Government has responded. The departments and agencies agree with our recommendations. Their detailed responses follow each recommendation throughout the chapter.



The Governor in Council Appointment Process

Chapter 2

Main Points

What we examined

A Governor in Council (GIC) appointment is an appointment made on the recommendation of the responsible minister and approved by the Governor General in Council—the Cabinet and the Governor General acting in a legal capacity. GIC appointments are made to positions in a wide array of federal organizations—Crown corporations, agencies, boards, tribunals, commissions, granting councils, and departmental corporations. Appointment positions include chief executive officers, board chairs, board directors, agency heads, and members of various tribunals, councils, and commissions. Overseeing the GIC appointment process is a core function of the Senior Personnel and Special Projects Secretariat in the Privy Council Office; the Secretariat establishes and administers policies and services for Governor in Council appointments on behalf of the Prime Minister's Office.

Our audit looked at the federal government's process for making Governor in Council appointments to Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada. We examined the extent of progress made in implementing recommendations on the appointment process from our 2000 and 2005 reports on Crown corporation governance. In the small entities we examined, we looked at appointment-related issues raised in our 2003 audit of the Office of the Privacy Commissioner and our 2006 audit of the Office of the Correctional Investigator. We also followed up on a related recommendation from our 1997 audit of the Immigration and Refugee Board that the government improve its practices for appointing Board members. We did not audit the appointment decisions made by the Governor in Council or the roles played by ministers, ministers' offices, or the Prime Minister's Office.

Officials of the Privy Council Office have expressed their view that aspects of our audit report go beyond the Auditor General's mandate and encroach on the exercise of discretion by ministers and the Governor in Council. We are satisfied that the findings in our report fall entirely within the mandate of the Auditor General. The audit focused on the mechanics of the appointment process and the chapter suggests opportunities for improvement.

Why it's important

Governor in Council appointees occupy senior positions in Crown corporations and federal agencies, boards, tribunals, commissions, granting councils, and departmental corporations—organizations that, whatever their size, can have a considerable impact on the health, safety, and quality of life of Canadians. It is therefore important that the appointees be qualified, that appointments be timely, and that proposed candidates be considered in an open, transparent, and competency-based selection process. Deficiencies or delays in the appointment of these officials could have significant consequences for the governance of the organizations and for Canadians. Problems in the appointment process could also discourage qualified individuals from accepting positions or renewals of their terms.

What we found

- Overall, progress in responding to our 2000 and 2005 recommendations to improve the appointment process in Crown corporations is unsatisfactory. Some measures in the Crown corporation Governance Framework announced in 2005 responded to concerns we had raised and have been implemented. For example, the Privy Council Office has created a website to publicize GIC appointment vacancies. However, progress on the timeliness of appointments to Crown corporations is disappointing. There are still many appointees serving whose terms have expired, and there are still delays in filling vacancies. In addition, there are lengthy delays in making appointments to small entities and to the Immigration and Refugee Board. Such delays can compromise the ability of these organizations to function effectively.
- Neither the appointment process nor the results of the process are communicated adequately to the entities and individuals involved. The level of involvement expected of Crown corporations and small entities in the appointment process needs to be clarified. The government has not determined what is a reasonable period for advance notice of appointments and reappointments of full-time appointees (chief executive officers of Crown corporations, heads of small entities, and tribunal members). The lack of communication among the Privy Council Office, ministers' offices, appointees, entities, and candidates for appointment has resulted in considerable dissatisfaction among appointees and entities. For example, the government does not always give entities advance notice of the date when it will announce appointments, or even the new appointee's starting date. This makes it difficult to manage new appointments efficiently, including orientation for new appointees and their participation in the work of the organization.

- At the Immigration and Refugee Board of Canada, turnover and vacancy rates for GIC-appointed positions are higher now than in 1997, when we first raised them as serious concerns. They have significantly contributed to increased delays in rendering decisions and an exceptionally high inventory of unprocessed refugee claims and immigration appeals. The result is uncertainty for claimants and significant costs to social programs.
- Orientation and training for new appointees are functioning well in Crown corporations, small entities and the Immigration and Refugee Board of Canada. This is an improvement over previous audit findings.

The Privy Council Office has responded. The Privy Council Office has stated that it will continue to support the Government in the administration of its policies on appointments and provide guidance to deputy ministers, Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada on roles and responsibilities of stakeholders in the appointment process. Their detailed responses follow the recommendations at the end of the chapter.



Auditing Small and Medium Enterprises

Canada Revenue Agency

Chapter 3

Main Points

What we examined

The primary goal of the Canada Revenue Agency as Canada's tax administrator is to ensure that taxpayers comply with their obligations and that Canada's tax base is protected. The Agency's Small and Medium Enterprises (SME) Program and the Underground Economy Initiative, which is part of the Program, are designed to deal with the risk of non-compliance with tax laws. Of the 5,600 Agency employees who carry out compliance activities in the SME Program, more than 1,000 work on the Underground Economy Initiative.

The underground economy is defined for tax purposes as activities that result in income earned but not reported. This can include illegal activities such as smuggling, drug trafficking, and money laundering, but also "hidden" legal transactions in goods and services. The Underground Economy Initiative deals with hidden legal transactions. Other Agency programs deal with illegal activities, non-filers, and non-registrants.

We audited the Underground Economy Initiative in 1999 and the SME Program in 2004. For this chapter, we followed up on selected areas of those audits. We examined the progress made by the Agency in implementing our previous recommendations on assessing the risks of non-compliance, targeting SME taxpayers to audit for compliance, promoting compliance, and measuring the performance of its compliance activities. Our conclusion about the Agency's overall progress was based on the relative importance of each recommendation, the complexity of implementing it, and the length of time the Agency has had since the original audit to implement the recommendation.

Why it's important

The revenues that the Canada Revenue Agency collects are used to fund government programs across Canada. Compliance with tax laws contributes to the economic and social well-being of all Canadians.

The Agency believes that the incidence of non-compliance is relatively low but financially significant. The results of its compliance program activities in the 2006–07 fiscal year accounted for an estimated \$12.7 billion in additional taxes, close to \$2.5 billion of which was related to small and medium enterprises. The Agency has said that

growing self-employment, globalization of the economy, and growing use of information technology to conduct business have increased the challenges of combating non-compliance. Furthermore, businesses that do not report all the income they earn put businesses that do at a competitive disadvantage and cause honest taxpayers to bear the tax load of those who cheat.

What we found

- Overall, the Agency has made unsatisfactory progress in addressing the recommendations we selected from our previous reports for follow-up. Progress on 7 of the 13 recommendations is satisfactory. However, of the 13 recommendations, we considered 6 to be the most important and progress was unsatisfactory on 4 of those 6 recommendations.
- Progress is unsatisfactory on three key recommendations aimed at improving how the Agency assesses the risks of non-compliance and targets taxpayer files to audit for unreported income. About half of its underground economy audits over the past five years did not detect unreported income, and the amount of unreported income that has been detected has remained relatively constant. Low-risk files represent a far higher proportion of audited files than those rated as high-risk by the Agency's computerized risk assessment system. Although a study by the Agency found that its file screeners needed to have more confidence in the accuracy of the computerized risk ratings, the Agency has done little to validate those ratings. The Agency has also failed to strengthen its Core (random) Audit Program. The results of a strengthened program could be used to improve the computerized risk assessment system.
- The Agency has made significant progress in reviewing all of the threats to the tax base. One of the four biggest threats it identified is the underground economy, and the Agency has developed an action plan to address it. It has also developed a Compliance Measurement Framework to improve how it monitors compliance. In addition, it has prepared a compliance monitoring report each year using the indicators in the Framework.
- The Agency has increased its outreach activities to promote compliance and taxpayer awareness of what the underground economy costs society. It has also recently developed its first national compliance communications strategy on this subject.

• Despite a commitment to do so, the Agency still does not report additional taxes on unreported income that are identified by its audit activities.

The Agency has responded. The Agency does not agree that its overall progress in addressing our recommendations is unsatisfactory. It believes that we have placed too much emphasis on certain recommendations in arriving at our conclusion.



Treaty Land Entitlement Obligations Indian and Northern Affairs Canada

Chapter 4

Main Points

What we examined

A treaty land entitlement claim arises when a First Nation asserts that the Government of Canada did not provide all of the reserve land promised under an historical treaty signed with the Crown. Once the federal government is satisfied that a First Nation has a valid claim, a settlement is negotiated and set out in a treaty land entitlement agreement.

Treaty land entitlement agreements provide First Nations with the right to select Crown land or with funds to buy private land, or both. These agreements are modern legal commitments that recognize the government's failure to comply with its treaty obligations. These obligations extend beyond land issues, but the agreements that we audited focus on land transfers. Indian and Northern Affairs Canada is responsible for managing the implementation of these agreements on behalf of the federal government, including the conversion of selected or purchased land to reserve status.

We examined the Department's progress in implementing recommendations from an audit we conducted in 2005, in which we reported a number of specific deficiencies in the Department's management practices for meeting treaty land entitlement obligations in Saskatchewan and Manitoba. The 2005 audit found that there had been limited progress in converting to reserve status the large number of acres selected in those provinces by First Nations.

Why it's important

First Nations of Saskatchewan and Manitoba are among the most impoverished in Canada. Acquiring land could serve as a means of improving their standard of living—for example, by providing an environment for developing First Nations-owned businesses. The Department has acknowledged that delays in converting land to reserve status under treaty land entitlement agreements affect First Nations' use of these lands and can have an impact on their social and economic development opportunities.

First Nations have a strong traditional attachment to land and view it as vital to their cultural preservation and economic development. It is important to both Canada and First Nations that the government meet the obligations set out in treaty land entitlement agreements within a reasonable time. Canada has century-old commitments to provide land for First Nations under treaties, which are constitutionally protected.

What we found

- Overall, Indian and Northern Affairs Canada has made satisfactory progress since 2005 in converting land selected by First Nations to reserve status. More than 315,000 acres have been converted to reserves in Manitoba and Saskatchewan, an increase of 42 percent since our previous audit. In both regions, the Department has also made satisfactory progress in working more closely with First Nations on plans to convert their outstanding selections of land, in its efforts to coordinate environmental assessments and land surveys of selected land, and in improving its capture and processing of data.
- The Department has not made satisfactory progress toward implementing several of our recommendations for improving its management practices to meet its obligations. For example, it still does not track the overall time it takes to process land selections and it cannot demonstrate that processing times have improved over the last three years. It has rarely supported the First Nations in Manitoba in their efforts to resolve third-party interests, as it did for Saskatchewan First Nations. And it has not established plans for converting to reserve status more than 250 selections of land in Manitoba that are not part of a four-year ministerial commitment.
- Without sustained attention to correct the weaknesses we have identified in our audit, the Department risks being unable to sustain its progress in converting land to reserve status.

The Department has responded. The Department agrees with our recommendation. Its detailed response follows the recommendation in the Chapter.



Passport Services Passport Canada

Chapter 5

Main Points

What we examined

Passport Canada is a special operating agency reporting to Parliament through the Minister of Foreign Affairs. It issues Canadian passports and other travel documents that are critical to travel across international borders.

Our February 2007 Status Report followed up on Passport Canada's progress in implementing recommendations from our 2005 audit of the Agency. Our audit work for that report was completed well before the United States' Western Hemisphere Travel Initiative (WHTI) came into effect in January 2007, requiring Canadians to carry a valid passport when crossing into the US by air. However, we did look at how Passport Canada was preparing for this initiative, and we noted that most local offices did not have a formal contingency plan in place to handle unexpected increases in the demand for passports.

In fact, in the 60 days between the formal US announcement of the initiative in November 2006 and the January 2007 effective date, Passport Canada was overwhelmed by passport applications—more than 505,700 applications in January 2007 alone, a 47 percent increase over the previous month and the equivalent of about 23,000 applications a day. As a result, there were significant delays in the processing of applications; waiting times at Passport Offices and the time it took for the call centre to answer phone calls also increased significantly. Following a hearing on the matter, the House of Commons Standing Committee on Public Accounts issued a report that criticized the Agency's planning for the surge in applications and asked for a plan detailing how Passport Canada would prepare for a second surge expected before June 2009, when the requirement for a passport will extend to Canadians entering the US by land and sea.

For this Status Report, we assessed whether Passport Canada has made satisfactory progress in implementing actions and developing contingency plans to prepare for any rise in the volume of passport applications leading up to 1 June 2009. We did not look at other areas covered in our 2007 Report; we had reported that the Agency's progress in those areas was satisfactory.

Why it's important

As the Public Accounts Committee's report noted, Passport Canada's inability to cope with the first surge in applications meant that Agency employees were overwhelmed and overworked; it also led to inconvenience and frustration for many Canadians, whose travel plans may have been delayed or cancelled. Passport Canada needs to be able to provide Canadians with passports according to its own service standards and be able to respond when demands increase, which is expected to occur as passports become a requirement for travellers entering the US by land and sea as of 1 June 2009.

What we found

- Passport Canada has made satisfactory progress in implementing actions to correct the passport processing problems it encountered in 2007 and in developing contingency actions should demand exceed its current capacity, although improvements are still needed. It carried out two internal "lessons learned" exercises, through which it determined the causes of problems experienced with the surge in demand during 2007 and identified areas for improvement.
- The Agency has taken substantial actions to increase its capacity by opening a new processing and printing plant in Gatineau, Quebec, for mail-in applications—the main source of backlogs during the first phase of WHTI; upgrading and expanding regional offices; and replacing aging printers at another printing centre, increasing its passport printing capacity there. It has also added 76 receiving agents to its existing network who review passport applications, considerably broadening access to passport services, especially in rural, remote, and northern locations.
- Passport Canada took steps to streamline the processing of walk-in applications. For example, it defined critical steps, roles, and responsibilities, and altered the workflow to have applications screened for proper documentation and complete information before going to passport officers, allowing them to focus on their critical role in determining passport entitlement. The Agency has also undertaken a major communications campaign encouraging Canadians to apply for passports well before the US deadline. Its aim is to avoid a last-minute rush and also to spread the increased demand over a longer period. It also improved internal reporting to better monitor the number of applications processed centrally and in its 33 local offices across Canada.
- The Agency has a broad contingency plan that includes several
 actions, the majority of which are aimed at increasing its operational
 capacity, should that become necessary. It has identified actions that
 will be triggered by changes such as excessive lineups or delays in

standard turnaround times. At the time of our audit, however, detailed planning was still underway and, in our opinion, critical gaps remained. For example, the Agency had not determined to what extent each contingency action would increase its operational capacity. Nor had it determined at what level of demand (number of applications received) it should initiate the actions, especially those with longer lead times such as hiring additional personnel. In addition, the Agency had not specified who has the authority and the responsibility to initiate contingency actions.

The Agency has responded. The Agency agrees with all of our recommendations. Its detailed responses follow each recommendation throughout the Chapter.

Appendix



Appendix Report on the audit of the President of the Treasury Board's report, *Tabling of Crown Corporations' Reports in Parliament*

Tablings in Parliament for parent Crown corporations: Annual reports and summaries of corporate plans and budgets

Section 152 of the *Financial Administration Act* (the Act) requires the President of the Treasury Board to lay before each House of Parliament, no later than 31 December of each year, a report on the timing of the tabling, by appropriate ministers, of annual reports and summaries of corporate plans and of budgets of Crown corporations. The Act also requires the Auditor General to audit the accuracy of the report on the timing of tabling and to present the results in her annual report to the House of Commons.

The President of the Treasury Board's report on the timing of tabling is included in the Annual Report to Parliament—Crown Corporations and Other Corporate Interests of Canada 2008, which was tabled on 28 January 2009.

At the time that our December 2008 Report was going to print, we were unable to include the results of the above-noted audit because the President of the Treasury Board's report had not yet been finalized. Our Auditor's report was subsequently appended to the President's report and is reproduced in this report to Parliament.

Auditors' Report

To the House of Commons:

As required by subsection 152(2) of the *Financial Administration* Act, I have audited, for the year ended 31 July 2008, the information contained in the report "Tabling of Crown Corporations' Reports in Parliament" included in the 2008. Amount Report to Parliament—Crown Corporations and Other Corporate Interests of Canada. The information contained in the report is the responsibility of the President of the Ireasury Board. My responsibility is to express an apinion on the information contained in the report, as required by section 152, based on my audit.

I conducted my make maccondance with the standards to assurance engagements established by the Canadian Institute of Chartered Accommunity. Those standards require that I plan and perform an audit to obtain reasonable assurance as to whether the information contained in the report is free of significant misstatement. My audit included examining, on a test basis, evidence supporting the dates and other disclosures provided in the report.

In my opinion, the information contained in the report "Tabling of Crown Corporations' Reports in Parliament" is accurate, in all stemme to respects, in accordance with its section Deadlines for Tabling in Parliament and Results Achieved.

Louise Bertrand, CA

Principal

for the Auditor General of Canada

Ottawa, Canada 10 December 2008

Status Report of the Auditor General of Canada to the House of Commons—2009

Main Table of Contents

Message from the Auditor General of Canada Main Points—Chapters 1 to 5

Appendix

Chapter 1 National Security: Intelligence and Information Sharing

Chapter 2 Governor in Council Appointments Process

Chapter 3 Auditing Small and Medium Enterprises—Canada Revenue Agency

Chapter 4 Treaty Land Entitlement Obligations—Indian and Northern Affairs Canada

Chapter 5 Passport Services—Passport Canada







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2009



Status Report
of the
Auditor General of Canada
to the House of Commons

Chapter 1
National Security:
Intelligence and Information Sharing



Office of the Auditor General of Canada



2009



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Chapter 1
National Security:
Intelligence and Information Sharing



The 2009 Status Report of the Auditor General of Canada comprises a Message from the Auditor General of Canada, Status Report of the Auditor General of Canada comprises a Message from the Auditor General of Canada, Status Report of the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises a Message from the Auditor General of Canada comprises and the Canada comprises

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Chapter

National Security: Intelligence and Information Sharing

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Table of Contents

Main Points	1
Introduction	į
What we found in previous audits Events since our previous audits Focus of the audit	5
Observations and Recommendations	8
Independent review of intelligence agencies Departments and agencies have assessed the level of review of intelligence agencies	8
Management of security intelligence	11
Significant improvements have been made, but gaps remain The government has conducted lessons-learned analyses There has been little progress on balancing privacy with national security concerns	11 15 16
Systems to support information sharing	20
Sharing of information for security screening of individuals working at airports has not improved Interoperability and information sharing need continued attention The government is developing a communications system at the secret level The RCMP has made improvements to its fingerprint systems Coordination of information on lookouts has improved, but there is a gap in quality	20 23 25 26 27
Conclusion	30
About the Audit	32
Appendix	
List of recommendations	35





National Security: Intelligence and Information Sharing

Main Points

What we examined

Security intelligence is the collection, evaluation, analysis, integration, and interpretation of all information used to warn a government about activities that may threaten a country's security. In Canada, the intelligence community consists of several organizations within the federal government, some of which collect information while others use it to deliver their programs or enforce the law. Because of the intrusive powers of agencies and departments involved in intelligence gathering and law enforcement, there are also organizations that review and publicly report their findings on the activities of these security and intelligence agencies.

In 2003, we reported that independent reviews of security and intelligence agencies and their reporting to Parliament varied significantly among agencies. In 2004, we reported that intelligence management across the government was deficient in many areas, from setting priorities for intelligence to coordinating and sharing information between departments and agencies. We also found deficiencies in the assessment of lessons learned following critical incidents, information and communications systems, watch lists, and personnel screening in airports.

For this status report, we examined the progress made since 2004 by 14 departments and agencies in their management and sharing of intelligence information, including the interoperability of their systems to support information sharing.

We also examined three review organizations—the Security Intelligence Review Committee (SIRC), the Commission for Public Complaints against the RCMP, and the Communications Security Establishment Commissioner—to assess the progress made by the government in response to our 2003 recommendation that security and intelligence agencies be subject to levels of external review and reporting that is proportionate to their level of intrusion into the privacy of individuals.

1

Why it's important

Tragic events such as the Air India disaster in 1985 and the September 2001 terrorist attacks in New York and Washington—and the more recent convictions of individuals in connection with terrorism-related offences—demonstrate the need for effective security intelligence by government organizations. More recently, Justice Dennis O'Connor's reports on the events relating to Maher Arar, as well as the proceedings of the Senate Special Committee and the House of Commons sub-committee on the Anti-terrorism Act, have underlined the need for better intelligence and information sharing between departments and agencies in Canada. The need for adequate management of intelligence activities is even more important in light of the challenges to security posed by events such as G-8 summit meetings and the upcoming 2010 Olympics in Vancouver.

For Canadians to have confidence in their security and intelligence organizations, they need to know that government agencies and departments maintain a balance between protecting the privacy of citizens and ensuring national security. Canadians also need to have confidence that the decisions and activities of intelligence agencies are legal, consistent, and appropriate, and that they are subject to examination by independent review agencies for reporting to their minister or Parliament.

What we found

- The federal government has made satisfactory progress since our 2003 and 2004 audits in implementing our selected recommendations for managing security intelligence. It has taken a number of initiatives to respond to our findings. We found progress in the organization and coordination of priorities among federal departments and agencies involved in security. The government also reduced the fingerprint backlog and is progressing in its development of a computerized system to analyze digitized fingerprints. It also took measures to improve the reliability of watch lists of individuals considered to be of interest to intelligence organizations. In other areas, there was either little or no progress or it was slow.
- Transport Canada and the Royal Canadian Mounted Police (RCMP) are still not sharing criminal intelligence information effectively.
 While Transport Canada has implemented additional procedures, the process does not access all data in the RCMP information management systems. In addition, the memorandum of understanding between the RCMP and Transport Canada regarding information sharing was terminated by the RCMP on 31 December 2007 as it no longer complied with ministerial direction or with the recommendations of the Commission of Inquiry into the

Actions of Canadian Officials in Relation to Maher Arar. Transport Canada may still be allowing high-risk individuals with criminal links to be cleared for access to restricted areas at airports.

- Since our 2003 audit, the government has assessed the level of review to which security and intelligence agencies are subject, and it is considering options for the future. However, at the time of this audit, the extent of independent review was still disproportionate to the level of intrusion these agencies may have into people's lives. As illustrated in recent testimony and reports by commissions of inquiry, the situation remains unchanged since our 2003 audit.
- We noted 16 cases, some reported more than once, where departments and agencies have reported legal barriers to information sharing. The Department of Justice Canada has not completed its research on how to manage the balance between the legal requirements for protecting the privacy of individuals and those for maintaining the security of the nation. As we also noted in our 2004 chapter, this has led to poor sharing of information among government departments. Progress, if any, has been slow since our 2004 audit.
- The development of a government-wide communications system at
 the secret level has progressed to the stage of limited
 implementation. However, it is over budget and behind schedule.
 While the system's future success depends on whether additional
 funding is obtained and whether its targeted users will adopt it,
 Public Safety Canada and the Treasury Board of Canada Secretariat
 remain confident.

The Government has responded. The departments and agencies agree with our recommendations. Their detailed responses follow each recommendation throughout the chapter.



Introduction

- 1.1 In Canada, a number of federal organizations are part of the intelligence community. Intelligence is a product of the collection, evaluation, analysis, integration, and interpretation of all available information. Security intelligence is used to warn the government about activities that may threaten Canada's security.
- 1.2 Departments and agencies are involved to varying degrees in the collection of security intelligence, with varying levels of intrusion into people's lives. In some cases, information is gathered through covert means such as surveillance and wiretaps. In other instances, the information is gathered using public sources such as the media or by compulsory reporting of financial transactions to the government. The actions of some of these departments and agencies are subject to review by other offices.

What we found in previous audits

- 1.3 In November 2003, we reported that independent reviews of security and intelligence agencies and their reporting to Parliament varied significantly among agencies. For example, the Canadian Security Intelligence Service (CSIS) is reviewed by two bodies external to CSIS—the Inspector General and the Security Intelligence Review Committee—while the Royal Canadian Mounted Police (RCMP) is subject to more limited review. The current levels of review of security and intelligence agencies are shown in Exhibit 1.1.
- 1.4 In March 2004, as part of a broader examination of the Canadian government's response to the events of 11 September 2001 in the United States, we reported on deficiencies in intelligence management across the government, from setting priorities for intelligence to coordinating and sharing information between departments and agencies. We also found deficiencies in the assessment of lessons learned following critical incidents, in information and communications systems, in security screening for airport personnel, and in the use of watch lists and lookouts—lists of individuals considered a threat to Canada or of interest to intelligence organizations.

Exhibit 1.1 Intelligence departments and agencies are subject to varying levels of review

Department or agency	Review body	Review body function
Canadian Security Intelligence Service (CSIS)	Inspector General Security Intelligence Review Committee	 The Inspector General reports annually to the Minister of Public Safety on the activities of the service. The Committee reports annually to Parliament through the Minister of Public Safety on the operational performance of the Service and any complaints against CSIS.
Royal Canadian Mounted Police (RCMP)	 Commission for Public Complaints Against the RCMP The courts review RCMP investigative processes when hearing criminal cases. 	 Reports annually to Parliament on investigations of complaints received from the public. May permanently limit or strike down statutory or common law powers. May review behaviour in individual cases.
National Defence	No separate review body. When assisting a federal agency, National Defence would be subject to that agency's review process.	N/A
Communications Security Establishment Canada	Commissioner of the Communications Security Establishment Canada	 Reports to the Minister of National Defence annually, and to the Attorney General on any activity the Commissioner believes may not be in compliance with the law. The Ministe tables the report in Parliament.
Canada Border Services Agency	No separate review body	N/A
Foreign Affairs and International Trade Canada	No separate review body	N/A
Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)	No separate review body	 Proceeds of Crime (Money Laundering) and Terrorist Financing Act provides for review of the operation of the Act every five years. The Privacy Commissioner can review and report to Parliament every two years on the measures taken by FINTRAC to protect information it receives or collects.

Note: All departments and agencies listed are subject to review by the Privacy Commissioner, the Information Commissioner, the Human Rights Commissioner, and the Auditor General.

Events since our previous audits

- 1.5 Since our 2003 and 2004 audits, there have been a number of commissions of inquiry that have examined and, for those that have reported their findings, made recommendations on the use of intelligence and how it is shared, either between departments or with other countries. The inquiries are the following:
 - Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar
 - Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin
 - Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182

In addition, the Minister of Public Safety mandated a Task Force on Governance and Cultural Change in the Royal Canadian Mounted Police to examine, among other things, the RCMP management structure, accountability, and oversight.

- 1.6 For the most part, the two inquiries into the actions of Canadian officials concluded that information needs to be shared to protect Canada's national security. However, any information shared should include a reference to its level of reliability and to whom the information may be transmitted. Information sharing was a central theme of the terms of reference of the Air India inquiry; however, the final report had not been released at the time of our audit.
- 1.7 Finally, the report of the Task Force on Governance and Cultural Change in the Royal Canadian Mounted Police, released in December 2007, contained recommendations to consider a form of oversight of the RCMP. However, at the time of this audit, the government had not announced any plans to implement these recommendations.

Focus of the audit

1.8 This follow-up audit assessed the progress that the government has made in implementing the recommendation from Chapter 10 of our November 2003 Report, Other Audit Observations, regarding independent reviews of security and intelligence agencies, and selected recommendations on intelligence and information sharing from our March 2004 Report, Chapter 3, National Security in Canada—The 2001 Anti-Terrorism Initiative.

- 1.9 The departments, agencies, and review bodies included in this follow-up audit are the same as those included in our original audits.
- 1.10 More information on the objective, scope, approach, and criteria can be found in **About the Audit** at the end of this chapter.

Observations and Recommendations

Independent review of intelligence agencies

Departments and agencies have assessed the level of review of intelligence agencies

- 1.11 In 2003, we examined the level of independent review in place for each agency with the power to collect intelligence on Canadian citizens. Both the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS) exercised similar powers of intrusion for reasons of national security when authorized by the courts. While CSIS had a relatively strong external review regime, the RCMP did not. The Commission for Public Complaints against the RCMP (CPC) could investigate only specific complaints or occurrences, and it could receive only information that the RCMP Commissioner thought relevant. The CPC could not perform audits on policy or systemic issues.
- 1.12 We reported in 2003 that the Commissioner of Communications Security Establishment Canada (CSEC) had full powers to review the work of CSEC and report what he found to Parliament and the Attorney General. Some agencies involved in security intelligence or enforcement, such as the Canadian Forces and Canada Border Services Agency (CBSA), were not subject to independent review by a body with a specific mandate to review security intelligence activities.
- 1.13 Subsequent to our audit, the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar revealed serious weaknesses in the management control of both the RCMP's National Security Criminal Investigations program and its related external review regime. The commission report made detailed recommendations on strengthening the external review regime for all agencies. The Chair of the CPC has also made public proposals for improving the review framework, as has the Task Force on Governance and Cultural Change in the RCMP.

- 1.14 The work done by these subsequent inquiries and other reports has pointed out several additional problems to those identified in our 2003 audit report:
 - Because the external review agencies have a mandate to review only single agencies, but more and more security work is done by joint task forces, there is an increased potential for review agencies to be unable to access the entire record of an investigation.
 - At the RCMP, events in recent years have resulted in internal and public inquiries calling for more extensive external review of regular policing, which could decrease the need for special inquiries.
 - In his annual report, the CSEC Commissioner qualified his opinion that CSEC is acting lawfully by saying he believes that there are ambiguities in CSEC's legislation; however, the report does not provide any details nor does it clarify the implications of this issue. Since the CSEC Commissioner's primary role is to determine the lawfulness of CSEC activities, the implications of this qualified opinion are serious. Both the House of Commons subcommittee and the special Senate committee on the review of the Anti-terrorism Act called on the CSEC Commissioner and the government to resolve their different positions on the legislation. CSEC is working with the Department of Justice Canada to address these issues through proposed legislative amendments.
- 1.15 Public Safety Canada, with the assistance of other departments, took the lead in coordinating an assessment of the level of independent review of intelligence agencies. Public Safety Canada is in the process of suggesting changes to the external review of these agencies. As part of this review, Public Safety Canada completed background papers that recognized the perceived lack of effectiveness of the CPC, the lack of interagency review capacity, the absence of independent review for some national security activities, and the lack of a clear role for parliamentarians in national security review.
- 1.16 The background papers also state several principles for an improved review model, including ensuring accountability, public confidence, and operational effectiveness. The papers also recommend that the level of review be proportionate to the level of intrusion and that reviews look beyond individual agencies to reflect the integrated nature of national security activities. If these proposals are implemented, they would address our 2003 recommendation. At this

point, no decision has been taken, nor is the timing of any planned implementation known.

1.17 While the government is not ready to implement corrective action on the level of independent review of security and intelligence agencies, two of the key agencies—the RCMP and Department of National Defence—have improved internal controls of their intelligence functions, as described in Exhibit 1.2.

Exhibit 1.2 Two key organizations have improved internal controls of intelligence functions

The Royal Canadian Mounted Police (RCMP) has taken action to better control its national security investigations. An RCMP internal audit published in July 2007 found that the RCMP's national security criminal investigations were not always in compliance with policy and ministerial direction. RCMP headquarters was not aware of all national security investigations and monitored only some of those of which it was aware.

The RCMP has improved its management of its national security operations, as its National Security Operations Branch now oversees all national security criminal investigations, from start to finish, to ensure that they comply with government and RCMP policies. The role of this new unit is to provide assistance to field units and ensure that investigations adhere to the RCMP principles on how to manage major cases.

In addition, National Defence and the Canadian Forces have made significant progress in integrating the intelligence functions that were formerly scattered across National Defence and the Canadian Forces, both domestically and overseas, under a single Chief of Defence Intelligence. This has created one of the largest intelligence capabilities in the government and has improved the internal control of defence intelligence.

At the time of our audit, there was no dedicated independent review of National Defence's intelligence functions. However, when operating in support of other agencies in Canada (such as the RCMP, the Canadian Security Intelligence Service, and Communications Security Establishment Canada), defence intelligence activities may be subject to the bodies that review those agencies.

1.18 Even though major inquiries have been held and considerable preparatory work has been done on the external review of national security agencies, no decisions have been taken to ensure that agencies are subject to a level of review proportionate to their intrusive powers. However, progress is seen as satisfactory because the government has completed its assessment (Exhibit 1.3).

Exhibit 1.3 Progress in addressing our recommendation on the level of agency review

November 2003 Report of the Auditor General of Canada, Chapter 10	
Recommendation	Progress
The government should assess the level of review and reporting to Parliament for security and intelligence agencies to ensure that agencies exercising intrusive powers are subject to levels of external review and disclosure proportionate to the level of intrusion. (paragraph 10.162)	Satisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Management of security intelligence

Significant improvements have been made, but gaps remain

- 1.19 Our 2004 audit reviewed the management of security intelligence, finding that overall direction came from five high-level government committees within the intelligence community, and that decision making was by consensus. When agencies could not reach consensus, decisions could be delayed. We were unable to assess the decisions made regarding overall government security priorities because they were subject to ministerial and Cabinet confidences.
- 1.20 We observed that there was some redundancy in the organization and development of strategic intelligence and that there were inadequate formal systems to take action on tactical intelligence. Alerts were sometimes passed by informal personal networks and could be delayed or lost.
- 1.21 At the time of our 2004 audit, the government had begun to create national security units that integrate representatives of agencies in Canada and, where appropriate, the United States. These include the Integrated National Security Enforcement Teams (INSET) and Integrated Border Enforcement Teams (IBET), led by the Royal Canadian Mounted Police (RCMP), and the Integrated National Security Assessment Centre (INSAC), led by the Canadian Security Intelligence Service (CSIS). These national security units were not always functioning well. For example, not all relevant agencies were contributing staff to INSAC, and a memorandum of understanding between the RCMP and CSIS to share information had expired.
- **1.22** We also observed in 2004 that while officials of various departments and agencies had cited the *Privacy Act* as a reason for not exchanging information, they could not provide any legal opinions,

specific references to legislation, or judgments as a basis for that opinion. The government has taken a number of initiatives to respond to the 2004 findings.

- 1.23 In April 2004, the government published Canada's National Security Policy, which directly addressed several of the weaknesses reported in our 2004 audit. First and foremost, it underlined the intent to build an integrated security system based on common definitions and assigned roles and responsibilities. Second, it recognized that comprehensive threat assessment was necessary to support integrated decision making.
- 1.24 The INSAC has been replaced by the Integrated Threat Assessment Centre (ITAC), an organizational unit of CSIS. ITAC's objective is to produce comprehensive threat assessments and analyses that are distributed within the intelligence community, the private sector, and to emergency services. Intelligence reports are seen by users to be timely and relevant; however, there are still some questions about whether ITAC has sufficient resources and subject area expertise. A 2006 review of ITAC documentation conducted by the Security Intelligence Review Committee found that, for the most part, ITAC complied with the Canadian Security Intelligence Service Act as well as direction from the Minister.
- 1.25 Analysis of potential threats for significant events such as the 2010 Olympics are now being done by ITAC from the combined intelligence provided by the main departments and agencies involved in national security. This analysis is linked to the Government Operations Centre, the interdepartmental strategic-level operations centre that coordinates national responses to Canadian and global events. However, some officials told us that although the creation of ITAC is clearly a step in the right direction, the production of threat assessment within the government could still be improved.
- 1.26 The National Security Policy did not change the mandates of intelligence agencies or their management structure. However, the management structure has evolved and has been strengthened to include a committee of deputy ministers on national security and an intelligence subgroup of that committee. There are also committees of assistant deputy ministers on national security as well as on intelligence, and a committee of directors general on intelligence. In Canada, as is the case with most governments based on the British (Westminster) parliamentary system, there is no single executive authority below the Prime Minister managing national security issues. Each minister is accountable for the results of their departments and

agencies. If an issue cannot be resolved through consensus, it may be given different priority by different departments, or its resolution delayed until a decision can be reached at Cabinet or by the Prime Minister. The National Security Advisor advises the Prime Minister while the Deputy Minister of Public Safety advises the Minister of Public Safety. Both the National Security Advisor and the Deputy Minister of Public Safety believe that the current command structure meets the government's needs and is functioning well. Some Westminster-type governments have taken additional steps to integrate security programs, such as using a single, government-wide budget and integrated command structures for the management of security intelligence.

- 1.27 The current management structure of committees has not dealt with certain operational issues in a timely manner. While the ultimate decision rests with the appropriate department or agency, issues are normally moved forward only after consensus is reached by committees. We found that resolution of certain issues appeared to have been delayed by calling for certain departments to research the issue and report back, which could take months. The National Security Advisor felt that this amount of time was not excessive; as most items are quite complex and they are given their due priority.
- 1.28 In 2006, the RCMP and CSIS signed a new memorandum of understanding on information sharing, which resulted in the RCMP's adoption of CSIS priorities for counter-terrorism, the creation of a Joint Management Team for counter-terrorism work, and the participation in joint training. The RCMP believes that this has reduced the level of conflict of work between the agencies and improved the sharing of information.
- 1.29 Although one of the central principles of the National Security Policy is improved coordination and integration of security efforts among government agencies, we found a number of cases where there was a failure to achieve integration or to deal with problems efficiently and effectively.
- **1.30** One case occurred in the spring of 2007, when there was a potential incident on the East Coast. There was a dispute over the nature of the incident, whether it was a humanitarian, criminal, or a security issue. There was a breakdown of the government coordinating processes and a loss of operational communications security.
- **1.31** The government has fallen short on its National Security Policy vision for the new Marine Security Operations Centres (MSOCs).

Housed by National Defence and including the Canada Border Services Agency (CBSA), Transport Canada, the RCMP, and Canadian Coast Guard, the Atlantic and Pacific coast MSOCs were originally intended to have the authority and capacity to detect, assess, and respond to marine security threats. However, we found that the MSOCs have only a limited ability to combine and analyze data as departments do not have unrestricted access to each others' data due to legal constraints over information sharing. Moreover, while National Defence is responsible for housing the coastal MSOCs and providing services to the other departments, no department has operational authority over the other departments.

- 1.32 Transport Canada, the RCMP, and CBSA have not established adequate information sharing arrangements to address organized crime in major airports. We provide additional details in the section regarding security screening of airport personnel by Transport Canada (paragraphs 1.48 to 1.57).
- 1.33 The creation of the National Security Policy, along with the development of the Integrated Threat Assessment Centre and the strengthening of the management structure of security intelligence, went a long way in addressing our 2004 recommendation. However, while progress has been satisfactory (Exhibit 1.4), issues that cannot be resolved through consensus may be given different priority by different departments, or their resolution delayed.

Exhibit 1.4 Progress in addressing our recommendation on an integrated security policy

March 2004 Report of the Auditor General of Canada, Chapter 3	
Recommendation	Progress
The National Security Advisor should consider the following when developing a planned integrated policy framework:	
a common understanding of domestic security;	Satisfactory
defined roles, responsibilities, and accountabilities; and	
 clear goals and objectives based on assessments of risks, threats, and vulnerabilities. (paragraph 3.68) 	

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

The government has conducted lessons-learned analyses

- **1.34** In our 2004 audit, we observed that it had taken about two years for the Assistant Deputy Minister Committee on Public Safety to follow up on the case of a Montréal resident caught attempting to smuggle explosives into the United States from Canada. Some agencies with principal involvement, such as the Passport Office, did not conduct any analysis.
- 1.35 We also observed in 2004 that, while the same committee had produced a lessons-learned report on the events of September 11, 2001, there had been no reporting of progress made against the report's recommendations. The only government-wide analysis conducted of the Government of Canada's response to those events was a four-page discussion paper for a meeting of agency heads that was prepared by the Interdepartmental Committee on Security and Intelligence. There were neither minutes kept of the meeting nor was there any resulting action plan.
- **1.36** As part of this follow-up audit, we reviewed several reports written by CBSA after the anticipated arrival of hundreds of illegal immigrants on the East Coast. No immigrants were discovered; however, one report noted that the operation encountered the same difficulties in coordination as the 1999 arrival of a large number of illegal immigrants on the West Coast. These findings need to be followed up on to ensure that lessons can be learned to better respond to similar future events.
- 1.37 We found that CSIS has a formal lessons-learned system to assess its operations. For example, it undertook a lessons learned report for a protest with potential for politically motivated violence. The exercise assessed how well CSIS was able to consolidate information coming in from a number of sites in Canada and prepare assessments for government managers.
- 1.38 Public Safety Canada has not completed its lessons-learned framework for federal departments and agencies, which it committed to completing in its response to our 2004 recommendation. It has, however, begun to develop a national framework for lessons learned, including other levels of government and non-governmental organizations. This initiative is in a very preliminary stage.
- **1.39** Public Safety Canada is the lead agency for coordinating the federal government's national program for security exercises, which it regards as a tool for incorporating lessons learned in operational practices and in diffusing them. It does not, however, track the

implementation of recommendations made in exercise reports. This is left up to the individual agencies.

1.40 The government has conducted lessons-learned exercises after significant security incidents. While these were not as comprehensive in some departments as we would expect, and there is no clear link to demonstrate that departments have integrated the changes in their operations, they are a step in the right direction (Exhibit 1.5).

Exhibit 1.5 Progress in addressing our recommendation on conducting a lessons-learned analysis

Recommendation	Progress
The National Security Advisor, with Public Safety and Emergency Preparedness Canada, should carry out a government-wide lessons-learned analysis after any significant security incident. Such an analysis should include an action plan that addresses the deficiencies identified and regular follow-up to assess progress. (paragraph 3.76)	Satisfactory

Satisfactory - Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

There has been little progress on balancing privacy with national security concerns

- 1.41 In 2004, we found that departments and agencies were not sharing intelligence information because of concern with violating provisions of the *Privacy Act* or the *Charter of Rights and Freedoms*, whether this concern was valid or not. While the Act appeared to accommodate sharing of information for national security reasons, departments and agencies could not support their interpretation of the law for not sharing information.
- 1.42 Since 2004, we have seen little progress on balancing privacy concerns with information sharing. The Treasury Board of Canada Secretariat collects annual reports from each department and agency that received new funding from the Public Security and Anti-Terrorism (PSAT) initiative. The annual reports contain a checklist of potential issues to bring to the attention of Treasury Board, including information sharing and legal issues. We reviewed these PSAT reports since the fiscal year 2004–05 and found 16 instances

where departments and agencies reported potential legal barriers to information sharing, including

- the "consistency of use" provision in the *Privacy Act* that requires that information be used only for the purpose for which it was collected, creating a potential barrier to sharing criminal intelligence;
- the *Customs Act*, s.107, being a potential barrier to Customs officials (now border services officers) sharing intelligence with other government departments;
- the inability of representatives from different departments and agencies to share intelligence within the Marine Security
 Operations Centres except within existing legal authorities; and
- significant challenges between Transport Canada and CBSA in sharing information in the Air Cargo Security Initiative due to differences in their mandates, priorities, and legal restrictions in the sharing of information.
- 1.43 The Department of Justice Canada provides advice to ensure departmental officials are well informed as to the legal need to protect information while protecting national security. The Department maintains a counter-terrorism desk book to ensure its lawyers provide consistent advice to departmental officials.
- 1.44 Justice Canada has been tasked by the deputy minister committee on national security, which includes representatives from Privy Council Office, Treasury Board of Canada Secretariat, and Public Safety Canada, to prepare an inventory of legal problems related to sharing of national security data. Justice Canada officials informed us that, in consultation with other departments, they determined that it would be more useful to describe legal problems on a thematic basis as a means of identifying potential solutions. Justice Canada is also working with the Interdepartmental Marine Security Working Group to identify potential barriers to information sharing and their possible resolution. Documents reviewed indicate that Justice Canada is aware of both the *Privacy Act* and *Customs Act* issues, as well as problems sharing data within the MSOCs. According to Justice Canada officials, information sharing problems may be due to the lack of shared or consistent mandates between departments and agencies and that one potential solution would be to amend their legislative mandates.
- **1.45** CBSA informed us that it is doing its own review of the authorities that govern all aspects of information sharing with partners. It is also seeking designation under the *Access to Information Act* and the *Privacy*

Act as an investigative body, which would allow it to receive and share information more easily with law enforcement agencies.

1.46 The government has begun to study certain aspects of the privacy issue raised by our 2004 recommendation, but has not realized any progress (Exhibit 1.6).

Exhibit 1.6 Progress in addressing our recommendation on balancing privacy with national security concerns

March 2004 Report of the Auditor General of Canada, Chapter 3	
Recommendation	Progress
The Privy Council Office and Public Safety and Emergency Preparedness Canada, with the assistance of the Department of Justice Canada and the Treasury Board Secretariat, should further examine and provide guidance on the sharing of information among government departments and agencies while balancing privacy concerns with national security concerns. (paragraph 3.94)	Unsatisfactory
Satisfactory—Progress is satisfactory, given the significance and complexity and the time that has elapsed since the recommendation was made.	of the issue,
Unsatisfactory—Progress is unsatisfactory, given the significance and completed the time that has placed since the recommendation was made	exity of the issue,

1.47 Recommendation. The Privy Council Office and Public Safety Canada, with the assistance of the Department of Justice Canada and the Treasury Board of Canada Secretariat, should increase their efforts to examine and provide guidance on the sharing of information among government departments and agencies while balancing privacy concerns with national security concerns.

Government's response. The Government of Canada recognizes the importance of information sharing, both domestically and internationally, in ensuring the safety and security of Canadians. Within the Government of Canada, each department and agency undertakes information sharing in accordance with Canadian laws and their respective legislation, mandates, and regulations.

The Privy Council Office (PCO), Public Safety Canada, Treasury Board of Canada Secretariat (TBS), and Justice Canada agree that PCO and Public Safety, with the assistance of Justice Canada and TBS will continue their efforts to examine and coordinate horizontal issues on the sharing of information among government departments and agencies while balancing privacy concerns with national security.

Privy Council Office's response. The Privy Council Office will help coordinate departments' collective efforts to develop policies related to sharing information with one another. Information sharing issues vary widely, reflecting the laws, mandates, and statutory requirements of individual departments; there is no single solution that will address all of them. As such, many information sharing issues must be managed on a case-by-case basis in conforming with specific mandates.

Public Safety Canada's response. Public Safety Canada is fully committed to working with other federal agencies and departments within a responsive and integrated national security policy framework to address future and current threats to our country. An integral part of this effort includes information sharing. Fundamental to our policy framework are the key Canadian values of democracy, human rights, and respect for the rule of law. It is therefore essential that privacy risks inherent in intra-institutional or cross-jurisdictional information sharing be properly identified, assessed, and resolved to ensure that the government not only strengthens our national security but continues to respect the privacy of individuals.

Department of Justice Canada's response. Justice Canada will continue to assist other departments by providing advice on the balance between the very real information sharing needs of the government and important values such as privacy and other human rights.

A recent Justice Canada initiative will identify obstacles within the current legal and policy framework that might inhibit the sharing of national security information. This review will be conducted with a view to developing principles to inform the government's approach to information sharing in the field of national security, and proposing for consideration by decision makers, administrative and legislative options to achieve information sharing objectives, while respecting the guiding principles.

Treasury Board of Canada Secretariat's response. The Treasury Board of Canada Secretariat (TBS) will continue efforts to share information while balancing privacy and national security concerns. It will assist departmental leads in these efforts by providing policy guidance and advice on matters relating to information management, privacy, and security. TBS is also committed to providing regular summary reports to Justice Canada and Public Safety Canada on issues related to information sharing and interoperability that are reported to TBS through the Public Security Initiatives Annual Reporting Process.

Systems to support information sharing

Sharing of information for security screening of individuals working at airports has not improved

1.48 Our 2004 audit found that some individuals who had been granted clearance to work in restricted areas of airports by Transport Canada had a criminal record; others were involved in criminal conspiracy, while still others had some association with known criminals. Transport Canada claimed that a section of the Aeronautics Act limits its ability to withhold a security pass only if it relates to "preventing unlawful interference with civil aviation" and that this interference is confined by international convention to such activities as hijacking and sabotage (Exhibit 1.7). Transport Canada also believed that the number of persons who should have security clearances withdrawn because of criminal association was very small.

Exhibit 1.7 Transport Canada's focus regarding aviation security is on the unlawful interference with civil aviation

Transport officials maintain that their only authority regarding aviation security is to prevent the "unlawful interference with civil aviation," which has been interpreted as physical threat to aircraft and passengers. Transport Canada officials agree that transporting drugs by concealing them in the aircraft could be considered unlawful interference. However, Transport Canada has not agreed that it has a role to prevent criminal organizations from infiltrating airports as it believes that its responsibility does not extend to preventing unlawful activity. Instead, Transport Canada believes that if it does prevent unlawful activity at airports as a result of its security screening process for airport workers, this may be a "side benefit."

Source Transport Canada

- 1.49 At Transport Canada's request, the Royal Canadian Mounted Police (RCMP) reviewed the files of all existing passholders (125,926) shortly after our 2004 report. The RCMP identified only 73 individuals as requiring further investigation. Of those
 - thirty-three were no longer working at an airport;
 - nine were cases of mistaken identity;
 - four had their clearances suspended as they had been arrested and charged but not yet convicted;
 - one was denied a clearance because of association with organized crime;
 - two had clearances cancelled but later reinstated on completion of a full investigation;
 - one case was undetermined as to outcome; and

- twenty-three were considered not to be of interest to Transport Canada as they had been included in the Canadian Police Information Centre database because of suicidal tendencies, or were no longer of interest to the police or the RCMP.
- 1.50 The discrepancy between our 2004 results and those reported by Transport Canada is explained by our audit using all sources of RCMP criminal intelligence, while the Transport Canada review did not. Our audit examined a sample of about 400 files, for which the RCMP analyzed the criminal intelligence databases on our behalf. Transport Canada's comprehensive review included over 125,000 files as noted above, but searched other databases only if there was a known result from the first query. We believe the methodology used by Transport Canada accounts for the difference in the results.
- a new process requiring additional information when reviewing applications for a security pass from new or potential employees. Following this new process, it did not issue passes to 971 of 3,717 individuals as there was insufficient information available for the previous five years to make an assessment. The RCMP identified an additional 87 individuals requiring investigation. Of these, 22 were denied or had clearances revoked and 2 were pending. However, an RCMP high-level analysis of organized crime at eight of Canada's largest airports (Vancouver, Edmonton, Calgary, Winnipeg, Toronto, Ottawa, Montréal, and Halifax) released publicly in 2008 found that there were more than 60 airport employees with criminal links. Many organized crime groups were found working within or using these airports.
- 1.52 In addition, the RCMP may receive incomplete information on applicants from Transport Canada. Once a person has been identified as requiring further investigation, the RCMP requests a consent form from Transport Canada, but this is often provided with information on the applicant's spouse, ex-spouse, or common-law partner blacked out. While the RCMP regards this information as necessary to complete the assessment, Transport Canada believes that the *Privacy Act* prohibits the Department from releasing this information.
- 1.53 Conversely, the RCMP may not give full information to Transport Canada for two possible reasons. First, third-party providers of information, such as municipal police forces, have not given permission for their information to be fully released; second, some RCMP officials believe that Transport Canada will disclose police intelligence information to those questioning a denial or revocation of their security

clearance. However, the Department of Justice Canada representatives informed us that this should not prevent Transport Canada from receiving this information as it should protect all data received. In addition, the memorandum of understanding between the RCMP and Transport Canada regarding information sharing was terminated by the RCMP on 31 December 2007, as it no longer complied with ministerial direction or with the recommendations of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. Applicants who are denied a clearance are informed in writing that they may apply for a review to the Federal Court.

- 1.54 We also noted that Transport Canada has not developed criteria for reviewing applications for restricted area passes, but makes the decision whether to approve problematic applications on a case-by-case basis. For example, a person applying for security clearance may have a criminal record. However, there are no established criteria to differentiate between those posing an increased security risk and those who committed less serious offences that may have happened in the distant past.
- 1.55 We did not retest a sample of files as we did in 2004. However, we highlight one case where a pass had been granted to an individual who had assault and weapons convictions and was under investigation for a murder relating to drug smuggling at a large airport.
- 1.56 While Transport Canada conducted a comprehensive review of its clearance holders, this was not based on complete police information, and Transport Canada should place limited reliance on the work conducted. As a result, Transport Canada may be granting clearance to high-risk individuals for work in secure areas of Canada's airports. Progress on the sharing of information for the security screening of individuals working at airports is thus unsatisfactory (Exhibit 1.8)
- 1.57 Recommendation. While awaiting direction on the sharing of personal information, Transport Canada and the RCMP should increase efforts to share information on individuals who have applied for security clearance to work at airports. Transport Canada should clarify its criteria and procedures when granting security clearance to individuals with previous criminal links.

The RCMP and Transport Canada's response. Transport Canada and the Royal Canadian Mounted Police (RCMP) agree that they will continue their efforts to share information on individuals who have applied for security clearance to work at airports. Transport Canada

agrees that it will continue efforts to formalize criteria and procedures used for security clearance decisions.

Transport Canada and the RCMP are negotiating a new memorandum of understanding for the exchange of information relevant to transportation security clearances, including criminal intelligence. In the context of these negotiations, Transport Canada and the Royal Canadian Mounted Police are reviewing options to address privacy and information sharing concerns with a view to improving the comprehensiveness and reliability of information used in processing transportation security clearances. Further, Transport Canada is formalizing criteria and procedures to be used for security clearance decisions.

Exhibit 1.8 Progress in addressing our recommendations on holders of clearances to restricted areas at airports

Recommendation	Progress
The RCMP and Transport Canada should reconsider the sharing of police intelligence information on criminal associations of applicants for and holders of clearances to restricted areas at airports. (paragraph 3.154)	Unsatisfactory
Once it has obtained access to complete police information, Transport Canada should begin a comprehensive review of all clearance holders. (paragraph 3.155)	Unsatisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Interoperability and information sharing need continued attention

1.58 In our 2004 report, we found that the government had, following September 11, 2001, identified the need for increased interoperability between systems to reduce or eliminate the walls or barriers to information sharing that existed at that time. Examples of such barriers were the lack of coordination and systematic updating of watch lists (or lookouts) and the exclusion of lost or stolen passports from the lists. In response, an assistant deputy minister Interoperability Working Group was established to identify "quick hits" (immediate action) to improve information sharing related to national security. This working group had completed its interim report *Improving Interoperability and Data Exchange* in September 2002. Our audit noted that progress

Interoperability—the ability of the federal government's numerous security information systems to work together technically, legally, semantically (through standard terminology), and culturally (through the willingness of organizations to share information).

achieved on the quick hits was not sustained. Only three projects were successfully completed, two projects had doubtful progress, and five projects made no progress since the Interoperability Working Group completed its interim report. We were informed by Treasury Board of Canada Secretariat and Public Safety Canada officials that, on further study, some remaining issues did not have short-term solutions and some had been combined with other issues.

- 1.59 Since 2004, the government has focused more attention on interoperability by working toward a national security information-sharing framework that would assist all departments. This framework, developed by Public Safety Canada, is reflected in its February 2008 report *Public Safety Interoperability—A Way Forward*.
- 1.60 The 2008 report was a conceptual strategy document designed to provide a foundation for future interoperability projects. However, it was never endorsed by the government, leaving its status in question. While this report proposes a foundation for future information sharing, it does not adequately identify the mechanisms needed by departments and agencies to achieve this goal.
- 1.61 Several of the original "quick hits" from the interoperability project were completed, and the government has concluded that others did not have short-term solutions, or have been combined with other issues. The 2008 report is a conceptual foundation document for a future interoperability project whose status remains uncertain at this date, and does not identify mechanisms to achieve information sharing (Exhibit 1.9).

Exhibit 1.9 Progress in addressing our recommendation on issues of interoperability and information sharing

Recommendation	Progress
Departments responsible for "quick hits" and other issues related to interoperability and information sharing should speed up efforts to resolve identified problems. The Treasury Board Secretariat and Public Safety and Emergency Preparedness Canada should monitor those efforts. (paragraph 3.84)	Satisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

The government is developing a communications system at the secret level

- 1.62 In 2004, we noted that another barrier to information sharing was the lack of a government-wide system allowing communication at the "secret" level among departments and agencies. A previously proposed system had been abandoned when it was found it could be vulnerable to attack. In November 2003, the government began developing a new communications system at the secret level.
- \$30 million for the pilot stage. Communications Security
 Establishment Canada (CSEC) is the technical authority for the project. The new system is called the Secret Communications
 Interoperability Project (SCIP) and uses customized commercial products (except for the cryptographic equipment). An additional
 \$8.4 million had been allocated to Public Safety Canada to establish a policy and legal framework for information sharing, which included the development of the previously mentioned report *Public Safety Interoperability*—A Way Forward. However, this policy and legal framework was not resolved before SCIP's development and pilot rollout.
- 1.64 To date, a data centre to host the SCIP has been built and the security put in place to protect it, and all necessary equipment has been installed. However, the limited implementation stage, which will include the RCMP, the Canadian Security Intelligence Service (CSIS), Public Safety Canada, the Canada Border Services Agency (CBSA), and possibly Foreign Affairs and International Trade Canada as participating partners, requires another \$4.4 million to be completed. Public Safety Canada cannot estimate the cost to provide SCIP to all anticipated users as this will depend on the costs of different models. The number of expected users has decreased by 75 percent.
- 1.65 The data transmission for SCIP will use the Secure Channel network infrastructure, which provides operational cost savings. Participating departments are expected to contribute to operational costs, but will not pay for individual transactions. The design of SCIP relied on lessons learned from previous projects at CSEC, particularly the Classified Message Handling System. SCIP is currently more than a year behind its original schedule, but is expected to finish its pilot by the end of March 2009. Significant progress has been made toward finding a technically feasible and secure solution. While its success depends on obtaining additional funding and being adopted by its target users, Public Safety Canada and Treasury Board of Canada Secretariat remain confident that it will succeed.

1.66 Significant progress has been made in the development of the government-wide communications system at the secret level. However, it is still in the pilot stage, and its success is contingent upon receiving additional funding and user acceptance. While progress was slow to start, the project is complex and has experienced better progress recently (Exhibit 1.10).

Exhibit 1.10 Progress in addressing our recommendation on a government-wide communications system at the secret level

Recommendation	Progress
Public Safety and Emergency Preparedness Canada and the National Security Advisor, with the assistance of the Treasury Board Secretariat, should co-ordinate and oversee the implementation of a government-wide communications system at the secret level. (paragraph 3.88)	Satisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory. –Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

The RCMP has made improvements to its fingerprint systems

- 1.67 In 2004, we reported that the RCMP had an estimated 60,000 fingerprints waiting to be processed in 2003, triple the number from 2001. The Public Security and Anti-Terrorism (PSAT) initiative provided \$38.6 million to improve the collection and analysis of fingerprints by using electronic machines to take digitized fingerprint images. Some 139 machines were installed. By January 2007, the RCMP reduced by 65 percent its backlog of fingerprints collected from individuals to be updated in their criminal records. However, this backlog subsequently rose by 50 percent. This was largely due to two factors: an increase in fingerprint analysts' workload because heightened security demands of many groups required additional fingerprint checks, and difficulties in attracting and retaining experienced analysts. At the time of our audit, performance data obtained from the RCMP indicated that the backlog of fingerprint checks had been eliminated, but a backlog still exists in updating this information in individuals' criminal records.
- 1.68 Our 2004 chapter reported that the electronic machines take and transmit fingerprints digitally, but the RCMP uses a manual system to analyze them and compare them with existing fingerprint data. The RCMP had proposed the Real Time Identification system (RTID) to

automate the process but at the time of our 2004 audit, it had not received funding for this project.

- 1.69 Funding has since been received for RTID, amounting to \$90 million, and the RCMP allocated an additional \$30 million from its own resources. The RCMP has indicated that the project is progressing well and is on budget. Waiting times for responses to requests for fingerprint checks have decreased significantly.
- 1.70 The RTID project began behind schedule in November 2006 and the first phase was completed in the summer of 2008, some 21 months later than the original project plan, due in part to delays in project approval and a more thorough review of the policy changes needed to implement RTID. The majority of the second and final phase is scheduled for completion in 2010.
- 1.71 While the RCMP has devoted additional resources and has eliminated the backlog for checking fingerprints against its database of existing fingerprints, a backlog remains in updating individuals' criminal record information. The RCMP has received funding for its RTID project and, while behind original timelines, is progressing toward implementation (Exhibit 1.11).

Exhibit 1.11 Progress in addressing our recommendations on improving the processing of fingerprints

March 2004 Report of the Auditor General of Canada, Chapter 3	
Recommendation	Progress
The RCMP should find and implement a solution to deal with its fingerprint backlog. (paragraph 3.107)	Satisfactory
The RCMP and Public Safety and Emergency Preparedness Canada should give priority to implementing the Real Time Identification project. (paragraph 3.109)	Satisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Coordination of information on lookouts has improved, but there is a gap in quality

1.72 Our 2004 report found that many of the processes supporting the use of watch lists or "lookouts" relied on manual, paper-based records and transfers of information. For the remainder of this report we will use the term lookouts to mean both lookouts and watch lists—lists of people who are to be prevented from entering Canada or whose entrance is to be monitored by Canadian border services officers. The

report noted missing terrorist lookouts, duplication of records, classification errors that could result in inappropriate decisions regarding individuals entering Canada, and names listed on lookouts that should have been already removed. Border lookouts did not contain a list of lost or stolen passports, but this information was provided to the RCMP with a substantial backlog of data that needed to be manually entered into its database. Lastly, there was no system to transfer passport information from the RCMP to the border lookouts.

- 1.73 Since our audit, while there is no ongoing formal mechanism to address national security lookout coordination, there is better coordination of information transfers on lookouts between organizations. The nature of lookouts may be long-term, where there is a known individual who is to be prevented entry at any time in the future, or short-term, where there is specific information that an individual may try to enter Canada in the near future.
- 1.74 The individual lookout information CBSA uses comes from various intelligence and law enforcement agencies, and is received in the form of either electronic transfers of data or other forms of communication. For example, CSIS data on long-term lookouts are electronically transmitted on a weekly basis to Citizenship and Immigration Canada (CIC) and CBSA. These lookout data records are updated as new information is received and reviewed every two years to remove entries that no longer apply. Short-term lookouts are provided to CBSA by memorandum, which are then entered manually into CBSA's systems.
- 1.75 The RCMP and CBSA work together as part of Integrated National Security Enforcement Teams, where information is strictly controlled and transferred only as needed on a case-by-case basis. In addition, the RCMP and CBSA have jointly undertaken work to develop a glossary of common terminology. The RCMP continues to provide INTERPOL information to CBSA for lookouts and expects that this process will be automated in 2009. However, legislative requirements of the Customs Act and Privacy Act restrict the sharing of some information that CBSA may have on international fugitives or criminals with the RCMP and thence to INTERPOL. RCMP officials believe that Canada's inability to provide information to INTERPOL may jeopardize the level of foreign assistance we receive.
- 1.76 Coordination among various agencies is also needed in using passenger information collected from airlines, as required by federal law since late 2001, to help federal agencies assess the risks presented by travellers before they arrive in Canada. The RCMP, CSIS, Passport

Canada, and CBSA cooperate as permitted by current legislation in managing and coordinating the use of advance passenger information (API), collected when passengers check in, and passenger name record (PNR) data, which is drawn from airline flight reservation systems.

- 1.77 There was also progress in improving the management and coordination of lookouts when CBSA was granted full access to the Canadian Police Information Centre database, which contains stolen passport information. CBSA can now match API and PNR data against all arrest warrants contained in this database, including offences that could be associated with threats to national security and immigration warrants, but only to identify persons involved with or connected to terrorism or other serious crimes, including organized crime, that are transnational in nature.
- **1.78** In addition, Transport Canada maintains a list of individuals who pose a threat to aviation security, named the Specified Persons List, which is based on information received from the airlines, CSIS, and the RCMP, and communicated with the airlines. Transport Canada is not permitted to share this information with any other agencies nor can other agencies contribute to this database.
- 1.79 For quality, lookouts need to be accurate, comply with legislation and regulations, and be regularly reviewed and updated in a timely manner or have information deleted when no longer relevant to national security uses. In addition, any errors need to be noted and investigated, resulting in the correction of processes and data records.
- 1.80 The Canada Border Services Agency told us that the agencies contributing national security data to its lookout databases are each responsible for ensuring the quality of the data provided. CBSA officers regularly review CBSA originated national security lookout data. However, there are no formal agency-wide data quality procedures for information provided by other agencies. As a result, lookout information provided by other agencies and contained in CBSA databases is not available for review by those agencies to ensure that it has been entered accurately and is still valid.
- 1.81 There has been substantial progress in the electronic exchange of lookout information since our 2004 report, which has led to some improvements. However, there is no ongoing formal mechanism to address national security coordination of lookouts. Processes to ensure the quality of lookouts have improved in certain areas; however, there is a gap in ensuring the quality of lookout information provided to CBSA by other agencies (Exhibit 1.12).

Exhibit 1.12 Progress in addressing our recommendation on the coordination of lookouts and on the quality of lookouts

March 2004 Report of the Auditor General of Canada, Chapter 3			
Recommendation	Progress		
The RCMP, the Canadian Security Intelligence Service, the Canada Border Services Agency, and the Passport Office should improve their management and co-ordination of watch-listing efforts that collectively contribute to Canada's national security. (paragraph 3.133)	Satisfactory		
The RCMP, the Canadian Security Intelligence Service, the Canada Border Services Agency, and the Passport Office should improve the reliability of watch lists by enhancing quality control over the exchange of data to ensure that information is complete, accurate, and timely. (paragraph 3.134)	Unsatisfactory		

Satisfactory — Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory -- Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

1.82 Recommendation. The Canada Border Services Agency, with the assistance of other agencies providing lookout information, should develop processes to ensure that the information used by CBSA is accurate and valid.

Canada Border Services Agency's response. The Canada Border Services Agency (CBSA) agrees. The Agency will examine this recommendation in consultation with partner agencies to identify gaps and possible measures to enhance the accuracy and validity of lookouts originating from the CBSA's partners. In the long term, CBSA will examine the possibility of automating its lookout interfaces with partners.

Conclusion

1.83 The federal government has made satisfactory progress in implementing our 2003 recommendation to assess the level of review and reporting to Parliament for security and intelligence agencies. However, much work remains. While the government has completed its assessment of the level of independent review of security and intelligence agencies, it awaits the final report of the Air India Inquiry before proceeding with its proposals. As a result, the situation remains unchanged since our 2003 report.

- 1.84 The federal government has made satisfactory progress in implementing several selected recommendations from our 2004 chapter in the management of security intelligence and the sharing of information among security and intelligence agencies. We found significant progress with the creation of Canada's National Security Policy and in the organization and coordination of priorities among federal departments and agencies involved in security issues. The government has conducted lessons learned exercises after significant security incidents to be better prepared for future events. The Royal Canadian Mounted Police (RCMP) also cleared its backlog of analyzing fingerprints and is progressing in its development of a computerized system to analyze digitized fingerprints. The government also took measures to improve the coordination of lookouts of individuals considered of interest to intelligence organizations.
- **1.85** Progress is slow, but satisfactory, in the area of developing systems that allow the sharing of intelligence information. The government-wide communications system at the secret level has progressed to a limited implementation stage and is contingent upon additional funding and user acceptance.
- 1.86 However, for other recommendations, there was either little or no progress or it was slow. Gaps remain in the coordination and integration of security efforts among government agencies, where we found a number of cases where there was a failure to achieve integration or to deal with problems efficiently and effectively. We found 16 instances where departments and agencies have reported legal barriers to information sharing. The government has not completed its research into, nor provided consistent guidance to departments on, managing the balance between the privacy of individuals and requirements to maintain the security of the nation. This has led to poor sharing of information among government departments.
- 1.87 Transport Canada and the RCMP are still not sharing criminal intelligence information effectively. While they have a memorandum of understanding for conducting security clearances of individuals working at airports, the process does not include checking against all criminal intelligence databanks. Transport Canada may be granting clearance for access to restricted areas at airports to high-risk individuals with criminal links.
- **1.88** Processes to ensure the quality of information in lookouts have improved in certain areas; however, there is a gap in ensuring the quality of lookout information provided to CBSA by other agencies.

About the Audit

Objective

Our objective was to determine whether the government has made satisfactory progress in implementing the recommendation from the section "Independent reviews of security and intelligence agencies," in our November 2003 Report, Chapter 10, Other Andre Observations, and selected recommendations from the March 2004 Report, Chapter 3, National Security in Canada—The 2001 Anti-Terrorism Initiative.

Scope and approach

The scope for this follow-up audit was to determine if satisfactory progress has been made concerning our 2003 and 2004 recommendations in the period from March 2004 to September 2008.

We examined the same departments, agencies, and review bodies that were included in the scope of our original audit and audit observations, adjusted to reflect government reorganizations: Privy Council Office, Public Safety Canada, Transport Canada, Canadian Security Intelligence Service, National Defence, Communications Security Establishment Canada, Royal Canadian Mounted Police, Foreign Affairs and International Trade Canada, Department of Justice Canada, Treasury Board of Canada Secretariat, Canada Border Services Agency, Citizenship and Immigration Canada, Passport Canada, Financial Transactions and Reports Analysis Centre of Canada, Security Intelligence Review Committee, Commission for Public Complaints Against the RCMP, and the Office of the Communications Security Establishment Commissioner.

Criteria

Listed below are the criteria that were used to conduct this audit and their sources.

Criteria	Sources
The government should assess the level of review and reporting to Parliament for security and intelligence agencies to ensure that agencies exercising intrusive powers are subject to levels of external review and disclosure proportionate to the level of intrusion.	November 2003 Report of the Auditor General of Canada, Chapter 10, Other Audit Observations, "Independent reviews of security and intelligence agencies," recommendation 10.162.
The National Security Advisor should consider the following when developing a planned integrated policy framework: • a common understanding of domestic security; • defined roles, responsibilities, and accountabilities; and • clear goals and objectives based on assessments of risks, threats, and vulnerabilities.	March 2004 Report of the Auditor General of Canada, Chapter 3, National Security in Canada—The 2001 Anti-Terrorism Initiative, recommendation 3.68.
The National Security Advisor, with Public Safety and Emergency Preparedness Canada, should carry out a government-wide lessons-learned analysis after any significant security incident. Such an analysis should include an action plan that addresses the deficiencies identified and regular follow-up to assess progress.	March 2004 Report of the Auditor General of Canada, Chapter 3, National Security in Canada—The 2001 Anti-Terrorism Initiative, recommendation 3.76.

Criteria	Sources
The Privy Council Office and Public Safety and Emergency Preparedness Canada, with the assistance of the Department of Justice Canada and the Treasury Board Secretariat, should further examine and provide guidance on the sharing of information among government departments and agencies while balancing privacy concerns with national security concerns.	March 2004 Report of the Auditor General of Canada, Chapter 3 National Security in Canada—The 2001 Anti-Terrorism Initiative, recommendation 3.94.
The RCMP and Transport Canada should reconsider the sharing of police intelligence information on criminal associations of applicants for and holders of clearances to restricted areas at airports.	March 2004 Report of the Auditor General of Canada, Chapter 3 National Security in Canada—The 2001 Anti-Terrorism Initiative, recommendation 3.154.
Once it has obtained access to complete police information, Transport Canada should begin a comprehensive review of all clearance holders.	March 2004 Report of the Auditor General of Canada, Chapter 3 National Security in Canada—The 2001 Anti-Terrorism Initiative, recommendation 3.155.
Departments responsible for "quick hits" and other issues related to interoperability and information sharing should speed up efforts to resolve identified problems. The Treasury Board Secretariat and Public Safety and Emergency Preparedness Canada should monitor those efforts.	March 2004 Report of the Auditor General of Canada, Chapter 3 National Security in Canada—The 2001 Anti-Terrorism Initiative, recommendation 3.84.
Public Safety and Emergency Preparedness Canada and the National Security Advisor, with the assistance of the Treasury Board Secretariat, should coordinate and oversee the implementation of a government-wide communications system at the secret level.	March 2004 Report of the Austor General of Canada, Chapter 3 National Security in Canada—The 2001 Anti-Terrorism Initiative, recommendation 3.88.
The RCMP should find and implement a solution to deal with its fingerprint backlog.	March 2004 Report of the Auditor General of Canada, Chapter 3, National Security in Canada—The 2001 Anti-Terrorism Initiative,
The RCMP and Public Safety and Emergency Preparedness Canada should give priority to implementing the Real Time Identification project.	recommendations 3.107 and 3.109.
The RCMP, the Canadian Security Intelligence Service, the Canada Border Services Agency, and the Passport Office should improve their management and coordination of watch-listing efforts that collectively contribute to Canada's national security.	March 2004 Report of the Auditor General of Canada, Chapter 3, National Security in Canada—The 2001 Anti-Terrorism Initiative, recommendation 3.133.
The RCMP, the Canadian Security Intelligence Service, the Canada Border Services Agency, and the Passport Office should improve the reliability of watch lists by enhancing quality control over the exchange of data to ensure that information is complete, accurate, and timely.	March 2004 Report of the Auditor General of Canada, Chapter 3, National Security in Canada—The 2001 Anti-Terrorism Initiative, recommendation 3.134.

Audit work completed

Audit work for this chapter was substantially completed on 25 September 2008.

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Appendix List of recommendations

The following is a list of recommendations found in Chapter 1. The number in front of the recommendation indicates the paragraph where it appears in the chapter. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation

Response

Management of security intelligence

1.47 The Privy Council Office and Public Safety Canada, with the assistance of the Department of Justice Canada and the Treasury Board of Canada Secretariat, should increase their efforts to examine and provide guidance on the sharing of information among government departments and agencies while balancing privacy concerns with national security concerns. (1.41–1.46)

Government's response. The Government of Canada recognizes the importance of information sharing, both domestically and internationally, in ensuring the safety and security of Canadians. Within the Government of Canada, each department and agency undertakes information sharing in accordance with Canadian laws and their respective legislation, mandates, and regulations.

The Privy Council Office (PCO), Public Safety Canada, Treasury Board of Canada Secretariat (TBS), and Justice Canada agree that PCO and Public Safety, with the assistance of Justice Canada and TBS, will continue their efforts to examine and coordinate horizontal issues on the sharing of information among government departments and agencies while balancing privacy concerns with national security.

Privy Council Office's response. The Privy Council Office will help coordinate departments' collective efforts to develop policies related to sharing information with one another. Information sharing issues vary widely, reflecting the laws, mandates, and statutory requirements of individual departments; there is no single solution that will address all of them. As such, many information sharing issues must be managed on a case-by-case basis in conforming with specific mandates.

Public Safety Canada's response. Public Safety Canada is fully committed to working with other federal agencies and departments within a responsive and integrated national security policy framework to address future and current threats to our country. An integral part of this effort includes information sharing. Fundamental to our policy framework are the key Canadian values of democracy, human rights, and respect for the rule of law. It is therefore essential that privacy risks inherent in intra-institutional or cross-jurisdictional information sharing be

Response Recommendation

properly identified, assessed, and resolved to ensure that the government not only strengthens our national security but continues to respect the privacy of individuals.

Department of Justice Canada's response. Justice Canada will continue to assist other departments by providing advice on the balance between the very real information sharing needs of the government and important values such as privacy and other

A recent Justice Canada initiative will identify obstacles within the current legal and policy framework that might inhibit the sharing of national security information. This review will be conducted with a view to developing principles to inform the government's approach to information sharing in the field of national security, and proposing for consideration by decision makers, administrative and legislative options to achieve information sharing objectives, while respecting the guiding principles.

Treasury Board of Canada Secretariat's response. The Treasury Board of Canada Secretariat (TBS) will continue efforts to share information while balancing privacy and national security concerns. It will assist departmental leads in these efforts by providing policy guidance and advice on matters relating to information management, privacy, and security. TBS is also committed to providing regular summary reports to Justice Canada and Public Safety Canada on issues related to information sharing and interoperability that are reported to TBS through the Public Security Initiatives Annual Reporting

36

Recommendation

Response

Systems to support information sharing

1.57 While awaiting direction on the sharing of personal information, Transport Canada and the RCMP should increase efforts to share information on individuals who have applied for security clearance to work at airports. Transport Canada should clarify its criteria and procedures when granting security clearance to individuals with previous criminal links. (1.48–1.56)

1.82 The Canada Border Services Agency, with the assistance of other agencies providing lookout information, should develop processes to ensure that the information used by CBSA is accurate and valid. (1.72–1.81)

The RCMP and Transport Canada's response. Transport Canada and the Royal Mounted Canadian Police (RCMP) agree that they will continue their efforts to share information on individuals who have applied for security clearance to work at airports. Transport Canada agrees that it will continue efforts to formalize criteria and procedures used for security clearance decisions.

Transport Canada and the RCMP are negotiating a new memorandum of understanding for the exchange of information relevant to transportation security clearances, including criminal intelligence. In the context of these negotiations, Transport Canada and the Royal Canadian Mounted Police are reviewing options to address privacy and information sharing concerns with a view to improving the comprehensiveness and reliability of information used in processing transportation security clearances. Further, Transport Canada is formalizing criteria and procedures to be used for security clearance decisions.

Canada Border Services Agency's response. The Canada Border Services Agency (CBSA) agrees. The Agency will examine this recommendation in consultation with partner agencies to identify gaps and possible measures to enhance the accuracy and validity of lookouts originating from the CBSA's partners. In the long term, CBSA will examine the possibility of automating its lookout interfaces with partners.



Status Report of the Auditor General of Canada to the House of Commons—2009

Main Table of Contents

Chapter 5

	Main Points—Chapters 1 to 5 Appendix
Chapter 1	National Security: Intelligence and Information Sharing
Chapter 2	Governor in Council Appointments Process
Chapter 3	Auditing Small and Medium Enterprises—Canada Revenue Agency
Chapter 4	Treaty Land Entitlement Obligations—Indian and Northern Affairs Canada

Message from the Auditor General of Canada

Passport Services—Passport Canada









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2009



Status Report
of the
Auditor General of Canada
to the House of Commons

Chapter 2
Governor in Council Appointments Process



Office of the Auditor General of Canada





Status Report
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Auditor General of Canada
to the House of Commons

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The 2009 Status Report of the Auditor General of Canada comprises a Message from the Auditor General of Canada, Main Points—Chapters 1 to 5, an appendix, and five chapters. The main table of contents for the Report is found at the end of this publication.

The Report is available on our website at www.oag-bvg.gc.ca.

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Chapter

2

The Governor in Council Appointment Process

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Table of Contents

Main Points	1
Introduction	5
What is a Governor in Council appointment?	5
The process for appointments	5
What we found in past reports	7
Recent developments in the appointment process*	7
Focus of the audit	9
Observations	10
Appointments to Crown corporations	10
There are many expired terms and delays in filling vacancies	11
The expectation for the level of board involvement in director and CEO search and selection needs to be clarified	14
The recruitment and selection of chairs and CEOs has become more transparent	15
Orientation and training are functioning well	16
Communication regarding appointments and reappointments is insufficient	17
Appointments to small federal entities	19
There are significant delays in filling vacancies	20
Search and selection processes for small entities vary	21
Orientation and training are functioning well	22
Performance is not consistently considered in reappointment decisions	23
Communication regarding appointments and reappointments is insufficient	24
Appointments to the Immigration and Refugee Board	25
A well-defined process is in place to recommend Board members to the government	26
There is a serious shortfall and high turnover of Board members	28
Board vacancies have significantly contributed to the high number of unresolved cases	31
The Board and its members receive late notification of appointment decisions	33
Extensive training is provided to Board members	33
Conclusion and Recommendations	35
About the Audit	38
Appendices	
A. List of recommendations	41
B. Crown corporations and entities included in our audit	42





The Governor in Council Appointment Process

Main Points

What we examined

A Governor in Council (GIC) appointment is an appointment made on the recommendation of the responsible minister and approved by the Governor General in Council—the Cabinet and the Governor General acting in a legal capacity. GIC appointments are made to positions in a wide array of federal organizations—Crown corporations, agencies, boards, tribunals, commissions, granting councils, and departmental corporations. Appointment positions include chief executive officers, board chairs, board directors, agency heads, and members of various tribunals, councils, and commissions. Overseeing the GIC appointment process is a core function of the Senior Personnel and Special Projects Secretariat in the Privy Council Office; the Secretariat establishes and administers policies and services for Governor in Council appointments on behalf of the Prime Minister's Office.

Our audit looked at the federal government's process for making Governor in Council appointments to Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada. We examined the extent of progress made in implementing recommendations on the appointment process from our 2000 and 2005 reports on Crown corporation governance. In the small entities we examined, we looked at appointment-related issues raised in our 2003 audit of the Office of the Privacy Commissioner and our 2006 audit of the Office of the Correctional Investigator. We also followed up on a related recommendation from our 1997 audit of the Immigration and Refugee Board that the government improve its practices for appointing Board members. We did not audit the appointment decisions made by the Governor in Council or the roles played by ministers, ministers' offices, or the Prime Minister's Office.

Officials of the Privy Council Office have expressed their view that aspects of our audit report go beyond the Auditor General's mandate and encroach on the exercise of discretion by ministers and the Governor in Council. We are satisfied that the findings in our report fall entirely within the mandate of the Auditor General. The audit focused on the mechanics of the appointment process and the chapter suggests opportunities for improvement.

Why it's important

Governor in Council appointees occupy senior positions in Crown corporations and federal agencies, boards, tribunals, commissions, granting councils, and departmental corporations—organizations that, whatever their size, can have a considerable impact on the health, safety, and quality of life of Canadians. It is therefore important that the appointees be qualified, that appointments be timely, and that proposed candidates be considered in an open, transparent, and competency-based selection process. Deficiencies or delays in the appointment of these officials could have significant consequences for the governance of the organizations and for Canadians. Problems in the appointment process could also discourage qualified individuals from accepting positions or renewals of their terms.

What we found

- Overall, progress in responding to our 2000 and 2005
 recommendations to improve the appointment process in Crown
 corporations is unsatisfactory. Some measures in the Crown
 corporation Governance Framework announced in 2005 responded
 to concerns we had raised and have been implemented. For example,
 the Privy Council Office has created a website to publicize GIC
 appointment vacancies. However, progress on the timeliness of
 appointments to Crown corporations is disappointing. There are still
 many appointees serving whose terms have expired, and there are
 still delays in filling vacancies. In addition, there are lengthy delays
 in making appointments to small entities and to the Immigration and
 Refugee Board. Such delays can compromise the ability of these
 organizations to function effectively.
- · Neither the appointment process nor the results of the process are communicated adequately to the entities and individuals involved. The level of involvement expected of Crown corporations and small entities in the appointment process needs to be clarified. The government has not determine! what is a reasonable period for advance notice of appointments and reappointments of full-time appointees (chief executive officers of Crown corporations, heads of small entities, and tribunal members). The lack of communication among the Privy Council Office, ministers' offices, appointees, entities, and candidates for appointment has resulted in considerable dissatisfaction among appointees and entities. For example, the government does not always give entities advance notice of the date when it will announce appointments, or even the new appointee's starting date. This makes it difficult to manage new appointments efficiently, including orientation for new appointees and their participation in the work of the organization.

- At the Immigration and Refugee Board of Canada, turnover and vacancy rates for GIC-appointed positions are higher now than in 1997, when we first raised them as serious concerns. They have significantly contributed to increased delays in rendering decisions and an exceptionally high inventory of unprocessed refugee claims and immigration appeals. The result is uncertainty for claimants and significant costs to social programs.
- Orientation and training for new appointees are functioning well in Crown corporations, small entities and the Immigration and Refugee Board of Canada. This is an improvement over previous audit findings.

The Privy Council Office has responded. The Privy Council Office has stated that it will continue to support the Government in the administration of its policies on appointments and provide guidance to deputy ministers, Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada on roles and responsibilities of stakeholders in the appointment process. Their detailed responses follow the recommendations at the end of the chapter.

Introduction

What is a Governor in Council appointment?

2.1 A Governor in Council (GIC) appointment is an appointment made on the recommendation of the responsible minister and approved by the Governor General in Council—the Cabinet and the Governor General acting in a legal capacity. Through the GIC process, the government appoints individuals to Crown corporations and a wide array of federal entities: agencies, boards, commissions, and tribunals, including the Immigration and Refugee Board of Canada (IRB). These appointees include heads and members of small federal entities and chief executive officers, board chairs, and directors of Crown corporations. Their responsibilities are diverse, ranging from making quasi-judicial decisions and socio-economic development recommendations, to managing large, diversified corporations. There are about 400 full-time and 1,000 part-time GIC appointees in the 43 Crown corporations and 52 small entities that we examined and in the IRB.

The process for appointments

- The process for GIC appointments involves identifying appointment positions where incumbents' terms will be expiring. determining selection criteria, assessing qualifications, and recommending a candidate. Overseeing the GIC appointment process is a core function of the Senior Personnel and Special Projects Secretariat in the Privy Council Office (PCO). The Secretariat, on behalf of the Prime Minister's Office, is responsible for establishing and administering policies and services that promote high-quality GIC appointments. The Secretariat tracks vacancies and upcoming term expiries and communicates these to departments. It also publishes the Governor in Council Appointments Guide, which contains information on provisions for GIC appointments and lists of appointees by entity. In addition, the Secretariat provides advice to the Governor in Council on remuneration and terms and conditions of employment for all appointments, and communicates the terms and conditions, including salary, to potential full-time GIC appointees.
- **2.3** For appointments to key positions—board chairs, CEOs, and agency heads—PCO's role also includes reviewing and recommending selection criteria and recruitment strategies. For these positions, PCO manages the selection process on behalf of the Prime Minister's Office, including receiving applications, screening candidates, and conducting interviews and reference checks.

- For some of the steps in the process, multiple stakeholders, other than the applicants and incumbents themselves, may be involved
- As indicated in "Accountable Government: A Guide for Ministers of State—2008," GIC appointments are recommended by the appropriate minister and are subject to the Prime Minister's approval before they go forward to the Governor in Council. The Governor in Council's authority to appoint is conferred by statute and formally given effect by an order-in-council. According to PCO, it is important for appointees to have the trust and confidence of the government of

Exhibit 2.1 Roles of players other than the Privy Council Office in the appointment process

Office	Role
Entity (Crown corporation, small entity, or the Immigration and Refugee Board)	Tracks upcoming vacancies. Participates in the development of selection criteria.
	 In some cases, submits names of candidates for appointment. In some cases, participates in assessment of qualifications of candidates.
Portfolio department (department reporting to the same minister as the entity)	 May track upcoming vacancies and support minister's office on appointment processes. Prepares documentation to be sent to Privy Council Office for submission to the Governor in Council, including information on the candidate, a recommendation signed by the responsible minister, and a draft order-in-council.
Portfolio minister's office (the minister's staff members)	 May track upcoming vacancies. May participate in the selection process, including assessment of the qualifications of candidates. Works with Prime Minister's Office to develop recommendations for GIC appointments. Performs background checks.
Portfolio Minister	 Makes recommendations to appoint or reappoint individuals. Announces appointments.
Prime Minister's Office	 Performs background checks to ensure that candidates have the trust and confidence of the government. May participate in the selection process, including assessment of the qualifications of candidates.
Prime Minister	 May make recommendations to appoint or reappoint individuals for key positions. Authorizes recommendations to go forward to Cabinet.
Cabinet	 Reviews appointment recommendations. If Cabinet supports the recommendations, they are sent to the Governor General.
Governor General	Formally approves the order-in-council (the legal instrument by which an appointment takes effect).

the day. A new government may wish to take time to determine the direction and approach desired for government organizations, which could affect the timeliness of the appointment process.

What we found in past reports

- 2.6 Our 2000 and 2005 audit reports on Crown corporation governance addressed the timeliness and staggering of appointments, board involvement in the search process, and the need to develop board profiles to define the qualifications and characteristics required. These audits also noted the importance of providing adequate orientation and training to GIC appointees. The government indicated that it intended to address these issues.
- 2.7 Our 2003 audit of the Office of the Privacy Commissioner identified serious risks to governance and administration of small federal entities. Among these risks, our audit noted that the former Commissioner had been given little or no orientation or training in the public service culture beyond being provided with two information booklets. Our 2006 audit of the Office of the Correctional Investigator found that the former Correctional Investigator never received any advice about his responsibilities or the expectations of the Privy Council Office, Treasury Board of Canada Secretariat, the minister or the portfolio department, and was reappointed several times without a formal review of his performance.
- 2.8 Our 1997 audit of the Immigration and Refugee Board (IRB) looked at the appointment process for members of the Refugee Protection Division. We raised serious concerns about the high turnover among members and the delays in appointing replacements, which resulted in a high number of vacant positions. Although we noted in our 2001 follow-up report that the turnover rate for members and the number of vacant positions had decreased significantly, we remained concerned at the time that the Board may not have the necessary complement of staff to deal with an increasing inventory of unprocessed refugee claims. We recommended that the government improve its practices for appointing board members to address the delays.

Recent developments in the appointment process

2.9 A significant development in GIC appointments was the passing of the *Federal Accountability Act* in 2006, which provided for the establishment of the Public Appointments Commission. The Act provides that the Commission will "oversee, monitor, review and report on the selection process for appointments and reappointments by the

Governor in Council . . . to ensure that every such process is widely made public and conducted in a fair, open and transparent manner and that the appointments are based on merit." The government was originally planning to have a Code of Practice governing the appointment process in place by early fall 2006. In May 2006, the government announced the nomination of the new chair and appointed three other members of the Commission. The chair's nomination was reviewed that month by the House of Commons Standing Committee on Government Operations and Estimates, which did not approve the proposed Chair nomination. The three appointed members then resigned from the Commission.

- 2.10 A Public Appointments Commission Secretariat to support the Commission was established within the portfolio of the Prime Minister. development of the Commission and, once it is established, to provide it with policy and operational support. The Secretariat was asked to review the appointment process at the Immigration and Refugee Board (IRB), and presented its report to the Minister of Citizenship and Immigration in January 2007. From April to November 2007, there were no personnel in the Secretariat; a staff of two was assigned in November 2007 and is developing the draft Code of Practice for the Commission.
- 2.11 Many other jurisdictions have public appointment bodies with codes of practice, guiding principles, or appointment guidelines that govern the appointment process for the jurisdiction. In the United Kingdom, the Code of Practice of the Office of the Commissioner for Public Appointments sets out a framework for the public appointment process. The Code provides departments with a clear and concise guide to the steps they must follow in order to ensure a fair, open, and transparent appointment process. In British Columbia, the Board Resourcing and Development Office applies Appointment Guidelines that set out a comprehensive process for appointing directors to public sector organizations. The BC Office recognizes that although the ultimate selection of appropriate candidates is solely within the prerogative of government, the appointment process needs to be collaborative, with both government and the organization taking an active role in the recruitment and evaluation of candidates. In Ontario, through its Public Appointments Secretariat and its principles governing the appointment process, the government has committed to a more open and transparent system for filling the

Focus of the audit

- 2.12 The focus of this audit was to assess whether the government had implemented our previous audit recommendations on the process for GIC appointments in Crown corporations, small entities, and the Immigration and Refugee Board of Canada. We looked at appointments and reappointments of heads of agencies, chief executive officers (CEOs), chairs, board directors, tribunal members, and other types of members. We also assessed whether appropriate management systems and procedures were in place to support those appointments. We assessed the extent to which the appointment and reappointment processes are timely, transparent, and competency-based, and the extent to which appointees receive appropriate orientation and training to perform their duties. We examined the support for the appointment process provided by PCO, departments, and the entities themselves. The Governor in Council has a broad discretionary authority and responsibility conferred by statute to make appointments. Accordingly, we did not audit the appointment decisions made by the Governor in Council or the roles played by ministers, ministers' offices, or the Prime Minister's Office.
- 2.13 The audit period for our file review was 1 January 2006 to 31 March 2008. For our analysis of vacancies and term expiries, however, we included data up to 20 September 2008. Information from Crown corporations and entities was obtained through the use of a detailed information gathering instrument, signed off by Crown corporation CEOs and agency heads. We refer to the instrument in this report as a detailed questionnaire.
- 2.14 Officials of the Privy Council Office have expressed their view that aspects of our audit report go beyond the Auditor General's mandate and encroach on the exercise of discretion by ministers and the Governor in Council. We are satisfied that the findings in our report fall entirely within the mandate of the Auditor General. The audit focused on the mechanics of the appointment process and the chapter suggests opportunities for improvement. More details on the audit objectives, scope, approach, and criteria are in About the Audit at the end of this chapter.

Observations

2.15 It is essential that Governor in Council (GIC) appointees be well qualified; appointments be timely; the appointments be made following an open, transparent, and competency-based selection process; and appointees receive appropriate orientation and training. It is also important to appropriately communicate with incumbents, candidates, and organizations, including notifying them of appointment and reappointment decisions so that they may arrange their personal and professional affairs and operational priorities.

Appointments to Crown corporations

- 2.16 Crown corporations are distinct legal entities, created through federal enabling legislation, that are wholly owned by the government. They deliver important public programs and operate in many sectors of the Canadian economy. We included 43 federal Crown corporations in our audit. These Crown corporations employ about 90,000 people and manage more than \$185 billion in assets, not including the assets of the Bank of Canada, the Canada Pension Plan Investment Board, and the Public Service Pension Investment Board.
- 2.17 The laws that govern Crown corporations set out different requirements for the number and types of GIC appointments. All Crown corporation chairs and directors and most chief executive officers (CEOs) are GIC appointees. The CEO is responsible for the day-to-day management of a Crown corporation. The chair of the board and the board of directors oversee the management and activities of the corporation. The timely appointment of qualified CEOs, chairs, and directors is, therefore, a critical component in Crown corporation governance—the direction, oversight, and management of a corporation.
- 2.18 In 2004, the President of the Treasury Board announced a new "merit-based" process for appointments in Crown corporations. The new process called for several changes, including greater board involvement in selecting new directors and CEOs.
- 2.19 Our February 2005 report on Crown corporation governance recommended that the government should implement this new appointment process, paying particular attention to timeliness and the proper staggering of appointments. The government's response stated that many of the issues identified by us were being examined in the context of the government's review of Crown corporation governance that would respond to our recommendations. In 2005, after we tabled our audit report, the President of the Treasury Board released a report

entitled Review of the Governance Framework for Canada's Crown Corporations: Meeting the Expectations of Canadians (2005 Governance Framework); which included specific measures to make the GIC appointment process competency-based, professional, and transparent.

2.20 In this audit, we focused on the Privy Council Office (PCO) as one of its roles is to oversee the GIC appointment process and administer policies and services for appointments. The government has implemented, or partially implemented, some of the measures in the 2005 Governance Framework related to appointments. Others, particularly those related to the appointment process for CEOs and directors, have not been addressed.

There are many expired terms and delays in filling vacancies

- 2.21 Our 2005 audit report on Crown corporation governance noted that appointments of directors were not being made on a timely basis, and that the length of time directors continued to serve after their terms had expired had actually increased since we raised this concern in 2000. While legislation permits incumbent directors of most Crown corporations to continue in office after their terms expire until a successor is appointed, in our view, it is not desirable to leave directors and the corporations concerned uncertain for lengthy periods about their continued presence on boards. This uncertainty does not allow for efficient planning for transitions. Nor does it take into account the fact that directors spend considerable time and effort on their duties, including reviewing materials for board and committee meetings, not knowing if they will still be directors when the meetings are held.
- 2.22 To calculate vacancies, we included all positions listed as vacant in the Governor in Council Appointments Guide produced by PCO as updated by the orders in council database on the PCO website. PCO officials take the view that a distinction should be made between a calculation of vacancies based on the maximum number of positions set out in statute and the positions that the government intends to fill. Four of 41 Crown corporations have determined that, for operational efficiency, the ideal number of directors is less than the maximum complement stated in their respective legislation. PCO officials have stated their intention to determine the optimal number of appointees for each Crown corporation. However, this determination has not yet been made. In the meantime, we have taken the approach used in the Governor in Council Appointments Guide, which calculates vacancies based on the maximum number of positions.

- 2.23 For this audit, we expected to see that appointment or reappointment decisions are made in a timely manner, that is, on or before incumbent appointees' terms expire, and vacancies are filled in a reasonable time frame.
- **2.24** We found that timeliness of appointments is still a problem. We looked at periods of vacancy during our audit period and the number of vacancies as of 20 September 2008.
- 2.25 During our audit period, for 175 of 430 appointments in the 43 Crown corporations (41 percent), the appointment terms ended and the appointees were not replaced or reappointed at the end of the term. Of those, 125, or 29 percent, were not replaced or reappointed for 90 days or more. The average number of days between expiry of the term and the start of a new term, through reappointment of the director or appointment of a new director, was 346. The median period was 211 days.
- 2.26 As of 20 September 2008, 30 of 430 director positions (7 percent) in the 43 Crown corporations were vacant. This number on its own is not necessarily a matter of concern. However, 65 of 400 appointees (16 percent) had expired terms and new appointments or reappointments were not made in a timely manner. The average time since their terms had expired was 373 days; the median was 146 days.
- 2.27 As of 20 September 2008, among the 15 largest Crown corporations we examined in our 2005 audit, 16 percent of directors had expired terms, compared with 36 percent in September 2004. However, the average interval of time since terms had expired increased from 235 days to 259 days for these 15 corporations (the median number of days was 133).
- 2.28 For CEO and chair positions, the situation was better than for directors. As of 20 September 2008, all but 3 of the 43 Crown corporations had a permanent CEO. These 3 permanent CEO positions were vacant for an average period of 590 days. There were no corporations with a chair vacancy. In some cases, there were long periods of vacancy prior to the appointment of the current incumbents. For example, the Federal Bridge Corporation was without a permanent CEO for almost a year and Ridley Terminals Inc. was without a chair for 18 months.
- 2.29 PCO recognized that there was a high number of expired terms and delays in filling vacancies and, in March 2007, it sent a letter to deputy ministers encouraging them to address any remaining backlog

12

of appointments within their portfolios as a priority. A similar letter was sent to portfolio ministers responsible for recommending appointments. PCO also told us that it held a workshop in March 2007 with departmental staff to discuss vacancy management.

- 2.30 Although the situation has improved since our 2005 audit, the fact that 22 percent of board positions in Crown corporations are either vacant or are occupied by incumbents with expired terms indicates an ongoing problem. Because a board requires a certain number of directors to make valid decisions (known as a quorum), a high number of vacancies can affect board decision making and create corporate management and governance issues. In our special examinations of Crown corporations, we have noted instances where delays in the appointment process have had an adverse impact on the governance of Crown corporations. For example, our special examination report in March 2008 on the International Development Research Centre noted that the board's composition was not in compliance with the law creating it. For almost one year, the board did not have a majority of Canadian governors, as is required by its legislation, due to government delays in filling board vacancies.
- 2.31 In addition to having board appointments made in a timely manner, it is important that directors are not all replaced at the same time. Best practices for boards of directors favour a mixed board composed of new and veteran directors. Replacement of a large proportion of directors may lead to loss of stability and continuity. We expected to see that appointments and reappointments were appropriately staggered. We found that in several corporations, more than half of directors' terms expired or will expire in the same year. Six Crown corporations had more than half of their directors' terms expiring in 2008, two corporations have a majority of directors' terms expiring in 2010, and two others have a majority expiring in 2012. While some of these appointments were made prior to our audit period, we noted that for those made during our audit period, attention to staggering appointments remains an issue. PCO indicated that it tries to ensure staggering of appointments, and we noted that for some corporations, some terms were made shorter than others as a way of staggering future appointments. There needs to be a sustained high-level consideration of staggering appointments to avoid continued issues in this area.

The expectation for the level of board involvement in director and CEO search and selection needs to be clarified

- 2.32 In our 2005 report on Crown corporation governance, we noted that most Crown corporation boards had in place board profiles outlining the skills and abilities needed on the board to oversee the affairs of the corporation. We observed that boards used the profiles to identify gaps in the needed mix of skills and to inform responsible ministers and PCO of their requirements. The appointment process announced by the government in 2004 stated that the boards themselves, through their nominating committees, would play a significant role in board renewal by screening and recommending suitable candidates for director positions. We recommended that the government implement the 2004 process, and the government indicated that the process outlined in the 2005 Governance Framework would address our recommendations.
- 2.33 For this audit, we expected to see that board input was being taken into account, and that the GIC appointment process for directors for each corporation was focused on addressing the appropriate mix of skills. Responses to our detailed questionnaire indicated that 38 of 41 Crown corporations have developed a board profile, setting out the skills or competencies needed for their boards to function effectively. Corporations carry out a formal or informal analysis of the types of expertise needed and lacking among current board directors.
- 2.34 However, we found that the extent to which board input was provided varied widely, from considerable board input to none at all. Some boards submit a list of required competencies or qualifications as well as names of individuals. Other boards submit a list of qualifications but no names. Responses to our questionnaire indicated that 26 of 41 Crown corporations suggested director candidates' names to the minister's office; 38 suggested overall competencies; and 32 communicated current gaps in competencies. Only 11 Crown corporations considered that their input was taken into account during the appointment process.
- 2.35 The government's expectation for the level of board involvement needs to be clarified. Crown corporations and their boards have taken a variety of approaches. The government's 2004 and 2005 changes to the appointment process set certain expectations for board involvement. Crown corporations were told to establish nominating committees and submit names. As stated above, a large percentage of Crown corporations provide some form of input to the minister's

- office. Others have noted that their suggestions for candidates are consistently not acted on, without any feedback, and they have ceased to provide input.
- **2.36** At the Public Service Pension Investment Board, a committee that is separate from the board and led by an independent chairperson, submits names of individuals with the competencies to fill gaps in the board profile, and legislation requires the minister to appoint from this list.
- 2.37 The 2005 Governance Framework called for the board of directors to determine the selection process for CEOs, including establishing a nominating committee to suggest candidates. We found that the government's expectation for the level of board involvement in recommending candidates for CEOs is unclear. For example, only 14 of 33 Crown corporations where the CEO is appointed by the GIC, through their board nominating committee or otherwise, submit a list of names of CEO candidates to the minister.

The recruitment and selection of chairs and CEOs has become more transparent

- **2.38** Based on the measures set out in the 2005 Governance Framework we expected to see improved transparency and openness of candidate searches for CEOs and chairs. Selection criteria were to be made public and the government was to develop a central website to advertise chair positions. The CEO selection process was to include, at a minimum, advertising the position and the selection criteria in either or both the *Canada Gazette* and the corporation's website. Boards were also to establish a nominating committee to identify candidates for the position of CEO and carry out CEO reference checks.
- **2.39** PCO has created a website to advertise GIC positions and its policy is to post all chair and CEO positions on this site, on the corporation's website, and in the *Canada Gazette*. PCO stated that vacancies and selection criteria for these positions have been posted on this website since April 2006. We also noted that CEO and chair positions were advertised in the *Canada Gazette*.
- **2.40** A selection committee or interview panel is created that is generally composed of senior representatives from the Prime Minister's Office, the portfolio minister's office, the portfolio department (typically an assistant deputy minister or director general), a representative of the Crown corporation's board (usually the chair),

- and PCO. The selection committee is responsible for assessing the applications received, identifying the candidates to be interviewed, and conducting the interviews.
- 2.41 PCO told us that reference checks are conducted on candidates for CEO and chair positions. CEOs and chairs we interviewed confirmed that for each of their own appointments, several references at the level of peer, superior, and subordinate, were called and asked indepth questions.

Orientation and training are functioning well

- 2.42 Appointees require appropriate orientation and support upon appointment to enable them to be effective in discharging their duties as GIC appointees. Our 2005 report on Crown corporation governance emphasized the need for continuing education of board directors in public sector developments, governance practices, finance, and risk management. The 2005 Governance Framework stated that the Canada School of Public Service would establish additional training and professional development programs on public sector management and Crown corporations.
- 2.43 For this audit, we expected that required orientation and training for appointees would have been identified, and that appointees would receive this orientation and training. We found that orientation and training for appointees was functioning well. For example, PCO and the Canada School of Public Service have developed new training programs for GIC appointees, which 57 percent of new appointees completed during 2007 and 2008. In April 2008, PCO reinstated a program of one-on-one meetings between newly appointed chairs and CEOs and senior officials of PCO and other central agencies for briefing sessions on various subjects tailored to the individual appointees.
- 2.44 Almost all Crown corporations responding to our detailed questionnaire indicated that CEOs, chairs, and board directors received orientation upon appointment, from the organization itself. Some also received orientation from PCO. The chairs and CEOs we interviewed noted overall satisfaction with the orientation and training they received.

16

2.45 We expected that orientation would include information on the requirement to comply with the required conflict of interest rules and ethical and political activities guidelines. We found that this information was provided, and that appointees were informed of the expected standards of conduct.

Communication regarding appointments and reappointments is insufficient

- 2.46 Communication of decisions. Appointment and reappointment decisions for full-time appointments need to be appropriately communicated to incumbents and candidates to allow them to manage their personal and professional affairs. Corporations must also receive information to manage operational priorities. Moreover, candidates need to be aware of the timelines for the entire process so that they know what to expect at each stage leading up to appointment. Late notification of appointment or reappointment decisions shows a lack of respect for the appointees. To address these issues for provincial appointments, the Ontario Public Appointments Secretariat requires that provincial appointees receive three to six months' notice of reappointment decisions. If it is not provided, the Secretariat will require a reappointment for a period equal to that notice period.
- 2.47 We expected that a reasonable length of time for notifying candidates, incumbents, and Crown corporations of appointment and reappointment decisions would be determined and that decisions would be communicated within this period. There was no indication that any notice period had been determined. Crown corporations and appointees told us that they received insufficient notice of appointments. In particular, 21 of the 45 chairs and CEOs of Crown corporations whom we interviewed said there is a general lack of communication. Fifteen described the process as a "black box" or a "black hole." Twelve commented on the lack of communication being especially evident as they or members of their boards approached the expiry of their terms.
- 2.48 For chairs and CEOs, eight commented that they received late communication of their original appointment. Two of those informed us that they learned of their appointments through the media. Two of 11 chairs and CEOs who were reappointed were notified of the reappointments after their terms had expired.
- **2.49** Twenty-two of 41 Crown corporations noted that new directors were notified of their appointments within one month of the start of their terms. For reappointments of directors, 16 of 41 Crown corporations indicated that incumbent directors were notified of their

reappointments only after their terms had expired. Chairs and CEOs of three Crown corporations told us of instances where directors learned at a board meeting that they had been replaced days earlier. For example, this happened to three directors at Canada Post Corporation and the board meeting had to be declared invalid because there was no quorum of current directors present.

- 2.50 It is also essential to notify the corporations themselves of appointments. Changes in board membership have a significant impact on the board's operations and work. Board operations are affected by the relative experience of directors. Senior management has to prepare orientation and training sessions for new directors and briefing materials for all directors for each meeting. Results from our detailed questionnaire indicated that more than half of the Crown corporations (26 of 41) considered that they did not receive sufficient notification of board member appointments.
- 2.51 We were informed by PCO that it is the role of the minister's office to inform appointees that their names are being put forward for appointment or reappointment and to inform incumbents when they will not be reappointed. PCO has stated that, given that GIC appointments are for fixed terms, there is no entitlement to reappointment. In an attachment to its March 2007 letter to deputy ministers, PCO stated that "... it is important to give adequate notice to full-time incumbents who will not be reappointed so that they may in turn arrange their personal and professional affairs."
- 2.52 Communication about the appointment process. We expected that the appointment process would be clearly communicated in a manner that would permit all stakeholders involved to understand the process and its various steps and their timing. However, many Crown corporations were not able to answer questions about different aspects of the appointment process, such as whether positions were advertised, what methods were used to assess candidates, and whether PCO assessed candidates for conflicts of interest. Of 41 corporations, five did not know who notified individuals of their appointment, and nine did not know who notified individuals of their reappointment. More than one third did not know when individuals had been notified. This lack of information can make it difficult for the corporations to make efficient transitions. Exhibit 2.2 shows the progress made in addressing the recommendations from our 2000 and 2005 chapters on Crown corporation governance.

18

Exhibit 2.2 Progress in addressing our recommendations on Crown corporations

February 2005 Status Report of the Auditor General, Chapter 7		
Recommendation	Progress	
As the government establishes new expectations for good governance practices for Crown corporations, it [the government] should effectively implement the revised appointment process for directors, chairs, and chief executive officers, paying particular attention to the timeliness and proper staggering of appointments. (paragraph 7.101, third bullet)	Unsatisfactory	
December 2000 Report of the Auditor General, Chapter 18		
Each responsible minister and the corporation should reach an understanding on how the board will be engaged in the selection and appointment of directors. (paragraph 18.45)	Unsatisfactory	
The government, with Crown corporations, should ensure that newly appointed directors are provided with adequate orientation and training in their responsibilities to the corporation, the corporation's relationship with the government, compensation policies for Crown corporation executives, and board procedures. paragraph 18.54)	Satisfactory	
iatisfactory—Progress is satisfactory, given the significance and complexity of the that has elapsed since the recommendation was made.	f the issue, and the	

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made

Appointments to small federal entities

- 2.53 We examined Governor in Council appointments in 52 small federal entities, responsible for administrative, research, advisory, investigatory, regulatory, or quasi-judicial functions. We adopted the approach to defining small entities that was used in our December 2008 chapter on Governance of Small Entities. We included organizations with fewer than 500 employees or with total annual funding of less than \$300 million. Despite their relatively small size, these organizations can have a significant impact on the health, safety, and quality of life of Canadians.
- **2.54** GIC appointments in small entities include agency heads and members of various tribunals, councils, and commissions. Some small entities have only one GIC appointment: the head of agency. Others also have boards of members who carry out the entity's operations, or act in an advisory capacity. Others are administrative tribunals whose members make quasi-judicial decisions.
- **2.55** We included appointments to small federal entities in this audit because agency heads had raised issues similar to those experienced by Crown corporations in relation to their GIC appointments.

In addition, we looked at appointment issues raised in our 2003 audit of the Office of the Privacy Commissioner of Canada. We also considered the February 2008 report of the Standing Committee on Public Accounts, tabled in relation to our 2006 audit of the Office of the Correctional Investigator. The Committee recommended improved checks and balances to prevent inappropriate activities of appointees in small federal entities, including improved orientation and training of appointees and a review of the performance of agency heads prior to reappointment.

2.56 As with Crown corporations, the appointment process for small entities involves multiple stakeholders. The Privy Council Office and staff in ministers' offices liaise with departments and entities regarding appointments. Security and reference checks are also conducted, and the ministerial recommendation is submitted to the Governor in Council.

There are significant delays in filling vacancies

- 2.57 As with Crown corporations, delays in appointing agency heads or members to small entities could impair their ability to carry out their mandates. We expected to see that appointments in small entities are made in a timely manner.
- 2.58 Members of small entities are generally not permitted to stay in their positions and exercise their duties after their terms expire. When a member's term ends and there is no immediate reappointment or replacement, the entity has a vacancy.
- 2.59 While we observed a relatively low number of vacancies among members in small entities, timeliness of appointments and reappointments is a significant issue. We found that as at 20 September 2008, 65 of 765 positions (8 percent) were vacant in the entities we examined. This does not include over 30 vacancies at the Royal Canadian Mounted Police External Review Committee, the RCMP Public Complaints Commission, and the Canadian Polar Commission. The only filled positions in these entities were the agency heads and, in one case, a vice-chair. PCO officials told us the mandates for these entities are under review and as such, the government is keeping appointments to a minimum.
- **2.60** During the audit period, there were 54 member reappointments, whose positions had been vacant for an average of 91 days (the median period was 43 days).

2.61 For agency heads, although there was only one vacancy as of 20 September 2008 (at the Canadian Forces Grievance Board), this position had been vacant for 207 days. During our audit period, there were 13 appointments or reappointments of heads of agency. Of the 13, 2 were made within a week of the expiry of the term of the previous incumbent. There were varying lengths of vacancy for the other 11, the longest being 640 days. The 13 positions had been vacant for an average of 296 days (the median period was 217 days).

Search and selection processes for small entities vary

- **2.62** We expected search and selection processes for members of small entities to be clear and consistent and focused on qualifications. In most respects, the appointment process mirrors that used for Crown corporations. However, there were differences depending on the type of entity.
- 2.63 Process for tribunals. For tribunals, we noted rigorous, clear, and competency-based processes. Openings are advertised on an ongoing basis on the GIC appointments website. For some tribunals, such as the Veterans Review and Appeal Board, the selection criteria and steps in the process are clearly laid out on the tribunal's website. The tribunal screens applicants, administers a written exam, conducts interviews, and carries out reference checks to arrive at a list of qualified candidates, sometimes taking into account geographical or other considerations. Names remain on the list of qualified candidates for a set period of time. We have been informed by some tribunal chairs that their input is assured because there is an understanding with the minister that he or she will recommend only candidates whose names are on the chairs' lists.
- **2.64** Process for other small entities. GIC appointments in small entities other than tribunals follow the general appointment process, including identification of appointment positions where incumbents' terms will be expiring, determining selection criteria, assessing qualifications, and recommending a candidate to the Governor in Council.
- 2.65 We expected to see evidence of selection criteria for members of small entities. For 13 small entities, we expected the criteria to also include their specific statutory requirements for qualifications, knowledge, or experience. While the files we reviewed contained curriculum vitae, we found evidence of selection criteria in only 3 of 20 members' files. Consequently, we were unable to determine whether

candidates' applications were being appropriately assessed. We saw evidence that reference checks were conducted in only 4 of 20 files that we reviewed.

2.66 As with Crown corporations, the government's expectation for the entities to suggest candidates was not clear. While 15 of 19 entities suggested candidates, only 8 considered that their suggestions were taken into account.

Orientation and training are functioning well

- 2.67 Appointees to small entities require appropriate orientation and support upon appointment to enable them to be effective in discharging their duties as GIC appointees. Our 2003 Audit of the Office of the Privacy Commissioner of Canada recommended that appointees be briefed on the government's legislative, policy, and control frameworks and on the standards of conduct expected of them. For this audit, we expected that required orientation and training for appointees would have been identified and appointees would receive this training.
- 2.68 The Public Accounts Committee has noted that orientation and training of appointees in small entities was a particular concern. In its February 2008 report on the Office of the Correctional Investigator, the Committee recommended that all full-time GIC appointees be appropriately trained, and requested a response from PCO. The government response to the Committee's report sets out the training provided to heads of agencies, including one-on-one orientation sessions for agency heads, and orientation courses given at the Canada School of Public Service.
- 2.69 Almost all small entities indicated that agency heads and members now receive, upon appointment, orientation on several topics. These topics include the entity itself, the federal government, the entity's relationship with government, the appointee's obligation to comply with standards, and conflict of interest guidelines. Almost all small entities reported that the entity provided orientation and training. In addition to the same one-on-one training through PCO, as is provided to chairs and CEOs of Crown corporations, the Canada School for Public Service estimates that during 2007 and 2008, 46 percent of newly appointed heads of agencies took the orientation courses it offers. Interviewees found the external training to be of varying use to them, usually depending on their previous experience in or exposure to the federal government.

2.70 Agency heads we interviewed noted that they received detailed information on complying with conflict of interest rules and ethical and political activities guidelines once they were appointed. The July 2008 government response to the report of the Public Accounts Committee notes that GIC appointees are required to certify in writing that they will comply with the guidelines and the Conflict of Interest Act. This requirement for certification applied to 15 of the 18 files we reviewed, and 14 contained the certification.

Performance is not consistently considered in reappointment decisions

- 2.71 In our 2006 audit, we observed that the former Correctional Investigator was reappointed several times without formal review of his performance. The Public Accounts Committee noted in its February 2008 report that PCO needs to follow a more thorough process to make sure that individuals who are being considered for reappointment are appropriately fulfilling their duties before reappointment is recommended.
- 2.72 The government's response to the Standing Committee's report states that the responsible minister determines whether or not an incumbent should be recommended for reappointment based on overall performance. Agency heads other than those responsible for quasi-judicial tribunals are evaluated based on the Performance Management Program for Heads of Agencies that was developed by PCO. This program is used to determine performance pay for heads of agencies other than tribunals. Regardless of whether the appointee was eligible to receive performance pay, we expected to find some written record in the appointment file to indicate that performance was considered in making reappointment decisions. However, in the files we reviewed, we found no such record.
- **2.73** For tribunal heads, PCO officials told us that because these positions are quasi-judicial in nature and are required to be independent of government, it is not appropriate that tribunal heads be subject to formal performance evaluations. They informed us that for these positions, the minister typically assesses performance through informal consultations with stakeholders before recommending reappointments and that, as a result, there is no written evidence of performance evaluations in most of their files.

Communication regarding appointments and reappointments is insufficient

- 2.74 As noted for Crown corporations, we expected that there would be a standard for communication of appointment and reappointment decisions. Such a standard would ensure that candidates and appointees would receive reasonable notification of decisions and be aware of the process timelines to allow them to manage their personal and professional affairs. Reasonable notification would also allow entities to manage operational priorities.
- 2.75 We found that there was no standard determined and notification of appointment and reappointment decisions was late. Responses to our questionnaire indicated that 2 of 11 agency heads (about one fifth) reappointed during the audit period were informed of their own reappointment decisions only after their terms had expired. For other appointees, this rose to one third. For new appointments, more than half of agency heads and other appointees were notified within one month of the start of the term.
- 2.76 During our audit period, there were 11 full-time GIC appointees recommendation by their agency head. We spoke to seven of these former appointees. In all cases, the appointees had communicated to their head of agency or responsible minister their desire to be reappointed, and the appointees had been informed by their head of agency that their reappointments had been recommended. Three of the seven individuals received what they considered to be late, disrespectful notice that they would not be reappointed. Another three received no notice other than a call from the agency's payroll
- 2.77 We expected that the entities would also receive reasonable notice of appointments or reappointments to positions in the entities. Twenty-two of 51 entities noted that they did not receive sufficient notification of appointments of agency heads and 20 of 51 noted the same for reappointments. Sixteen of 37 entities with members said they received insufficient notification of member appointments; 22 of 37 entities said notification of member reappointments was insufficient. Exhibit 2.3 shows the progress made in addressing our recommendations from our 2006 chapter on the Protection of Public Assets (Office of the Correctional Investigator) and our 2003 Report on the Office of the Privacy Commissioner.

24

Exhibit 2.3 Progress in addressing our recommendations in small entities

November 2006 Report of the Auditor General, Chapter 11			
Recommendation	Progress		
The Privy Council Office should ensure that it appropriately advises and trains full-time Governor in Council appointees about their expected standards of conduct as holders of public office. (paragraph 11.100)	Satisfactory		
September 2003 Report of the Auditor General—Report on the Office of the Priv	acy Commissioner		
The Privy Council Office should ensure that Governor in Council appointees are appropriately briefed on the government's control framework and its legislative and policy framework and on the standards of conduct expected of them. (paragraph 211)	Satisfactory		

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Appointments to the Immigration and Refugee Board

2.78 The Immigration and Refugee Board of Canada (IRB) was established in 1989 as an independent administrative tribunal that has quasi-judicial functions. The Board is accountable to Parliament through the Minister of Citizenship, Immigration and Multiculturalism. In the 2007–08 fiscal year, as Canada's largest federal tribunal, the IRB had an operating budget of \$113.7 million, was funded for 1,025 people, and had an approved complement of 164 members—the largest number of full-time Governor in Council appointees of all federal organizations. (The approved complement does not include the Chairperson, also a GIC appointee.)

2.79 The IRB consists of three divisions, each with its own mandate under the *Immigration and Refugee Protection Act*:

- The Refugee Protection Division decides claims for refugee protection made by people who are already in Canada, through hearings or other processes.
- The Immigration Division conducts admissibility hearings for foreign nationals or permanent residents who seek entry into Canada, or who are already in Canada, and are alleged to be inadmissible. It also conducts detention reviews for people who are detained for immigration reasons.
- The Immigration Appeal Division hears and decides appeals on various immigration matters, including appeals by sponsors whose applications to bring family members to Canada have been refused

- by Citizenship and Immigration Canada and appeals of removal orders made against permanent residents, refugees, and other protected persons.
- 2.80 While each division is responsible for making decisions on different immigration or refugee matters, they all follow an administrative tribunal process similar to, but less formal than, a court process. The process is flexible and can take many forms as long as it ensures that the IRB makes well-reasoned, efficient, and fair decisions. The IRB tribunal process is based on Canadian law, Canada's international obligations, and Canada's humanitarian traditions.
- 2.81 Decisions at the Immigration Division are made by IRB employees who are federal public servants. Decisions at the Refugee Protection Division and the Immigration Appeal Division are made by Board members who are GIC appointees.
- 2.82 The IRB carries out its work in a complex and rapidly changing global environment. Board members conduct proceedings and render decisions that have a profound impact on the lives, freedom, and security of claimants and on the integrity of our immigration system. Members require an extensive knowledge of immigration and refugee law, and administrative law, principles, and procedures. Selection standards for new members must ensure that they are qualified and possess the appropriate skills and competencies. Members must be free of outside influence as they are required to render decisions with the highest level of independence.
- 2.83 We looked at the appointment process for members of the Refugee Protection Division in our 1997 audit of the IRB. We raised serious concerns at the time regarding the high turnover among members and the delays in appointing replacements that resulted in a high number of vacant positions. Although we noted in our 2001 follow-up report that the turnover rate for members and the number of vacant positions had decreased significantly, we remained concerned at the time that the Board may not have the necessary complement of staff to deal with an increasing inventory.

A well-defined process is in place to recommend Board members to the government

2.84 The government has put in place a specific process for appointing members to the IRB that has evolved over time. In our 1997 report, we raised a number of concerns about the selection process for Board members. We stressed the need for the government to ensure that the process provides greater certainty that appointments

and reappointments are based on the qualifications needed to respond to the complexity and the importance of the task. In our 2001 follow-up audit, we noted that a number of improvements had been made to the selection process. The process has been modified twice since then.

- 2.85 In March 2004, the Minister of Citizenship and Immigration announced changes to the appointment process for the IRB aimed at "eliminating political patronage and strengthening the criteria for the Board." The revised process included five key steps: an initial screening of candidates, a written test, a screening by an advisory panel of outside experts, an interview by a selection board that included external experts, and reference checks. Members of the Advisory Panel were nominated by the Chairperson of the IRB and the Minister and included lawyers, academics, members of organizations that assist newcomers to Canada, and human resources experts.
- 2.86 The role of the Advisory Panel was to assess the applications received and the results of the written test, and to recommend candidates for interview by the Selection Board, chaired by the IRB Chairperson and made up of experts with in-depth understanding of the IRB and its decision-making processes. These experts, primarily senior-level IRB officials and external experts, were appointed by the IRB Chairperson. Following reference checks, recommended candidates were added to the list presented by the IRB Chairperson to the Minister of Citizenship and Immigration for consideration in recommending appointments to the GIC. Recommended candidates remain on that list for two years, after which they are removed from the nomination process and must reapply. The new process also provided for the IRB Chairperson to make recommendations to the Minister on reappointments of members whose terms were coming to an end based on an assessment of their performance.
- **2.87** In November 2006, the Minister announced that an independent review of the selection process would be conducted by the newly created Public Appointments Commission Secretariat. The review was to assess the effectiveness of the changes made in 2004. The Minister stated that, in the interim, the government would continue to appoint qualified individuals to the IRB.
- 2.88 In January 2007, the Commission Secretariat released its report Governor in Council Appointments Process—Immigration and Refugee Board of Canada. It made nine recommendations, including merging the Advisory Panel and the Selection Board into a new Selection Advisory Board consisting of an even number of IRB and external representatives, and requiring candidates to achieve a pre-determined passing mark for

the written test to be considered further. It recommended that the Minister and the IRB Chairperson should each appoint half of the external representatives to the new Selection Advisory Board. The report also recommended that Board appointees serve an initial term of three years, followed by subsequent five-year and two-year terms, if performance evaluations are favourable. The Secretariat's report also recognized the prerogative of the Minister and the Governor in Council to decide whether a member should be reappointed, and noted that positive performance does not automatically lead to a renewed term. The government accepted all the Commission Secretariat's recommendations and, in July 2007, the Minister announced a revised selection process incorporating the recommendations.

- 2.89 As part of a review of various issues facing Canada's refugee determination system, the House of Commons Standing Committee on Citizenship and Immigration also examined the appointment process for IRB members. The Committee's report, tabled in Parliament in May 2007, included a number of recommendations to which the government responded in October 2007.
- 2.90 We examined a sample of recommendations for new appointments made by the IRB between 1 January 2006 and 31 March 2008. We expected that the established process to solicit and assess candidates would be consistently followed. Our review covered both the 2004 process and the one revised in July 2007. Our file review revealed that for all sampled recommendations put forward to the Minister, the process then in place was followed.

There is a serious shortfall and high turnover of Board members

- 2.91 Number of Board vacancies. We noted in our 1997 report that the government needed to improve its practices for appointing Board members in a timely manner in order to ensure that the IRB has a sufficient number of decision makers available when they are needed. Vacancies at the Board can have a significant impact on its ability to process refugee claims and immigration appeals.
- 2.92 Following changes made to improve the appointment process in the last four years, we expected that appointments would be made in a timely manner and that the IRB would be staffed with the number of decision makers it required to achieve its mandate.
- 2.93 In the 2003–04 fiscal year, the IRB put in place an activity-based budgeting model to estimate the number of members required to handle a given volume of cases. In the last four years, the approved

complement of GIC appointees varied from 212 members in 2004–05 to 164 in 2007–08. The 2007–08 complement is based on the expected resolution of 25,000 cases at the Refugee Protection Division and 6,500 cases at the Immigration Appeal Division.

- 2.94 As shown in Exhibit 2.4, the number of GIC positions filled was in line with the approved complement until the second quarter of 2006–07, when the IRB started to experience a significant decline in the number of its decision makers. At 31 March 2008, only 106 positions out of a complement of 164 positions were occupied, resulting in a vacancy rate of 35 percent, By the end of September 2008, 127 positions were filled, for a vacancy rate of 23 percent.
- 2.95 The high level of vacancies is due to two factors: reappointments were not made for a large number of members whose terms expired, and the government did not appoint a sufficient number of new members to fill vacant positions.

Exhibit 2.4 The gap between total positions and filled positions widens starting in the second quarter of the 2006–07 fiscal year



2.96 Turnover of Board members. IRB members require special expertise that can be acquired through experience and, to a lesser degree, training. The IRB estimates that it takes between 6 to 12 months for new members to become fully productive. In addition to having a negative impact on productivity, a high turnover rate

represents additional costs for relocation and training. The Board estimates that the cost of training a new appointee until fully productive is approximately \$100,000, including salary and benefits.

- 2.97 In our view, equilibrium between new appointments and reappointments is essential to ensure consistency and continuity in operations, and good performance by members should be a factor in recommendations for reappointment. Such an approach promotes both recruitment of high-quality candidates and retention of experienced members.
- 2.98 We expected that recommendations for reappointments made by the IRB to the Minister would be based on a thorough assessment of a member's performance. Our review noted that the IRB places a high degree of importance on the assessment of its members' performance. The performance evaluation process is well defined and relies on merit-based criteria. Our review of a sample of recommendations for reappointments made by the IRB between 1 January 2006 and 31 March 2008 revealed that, in all cases, members recommended were appraised as satisfactory, using that process. All appraisals were signed off by the member and the IRB Chairperson or appropriate Deputy Chairperson. We also noted that in all cases where a reappointment was recommended, the IRB Chairperson made the recommendation to the Minister at least six months in advance of the expiry date of the incumbent's term.
- 2.99 Of the 89 members whose terms ended between 1 January 2006 and 31 March 2008, and who were recommended by the IRB to the Minister for an additional term, the Governor in Council reappointed 37 members (42 percent).
- 2.100 In our 1997 report, we raised concerns about the high turnover of members at the IRB. This not only seriously hinders the Board's ability to achieve its mandate, but also results in significant costs to the organization. At 31 March 2008, half of the 106 members were serving for a first term and had less than three years of experience. In our view, it is important for the government to ensure that the IRB is staffed with a sufficient number of experienced decision makers, given the nature and complexity of the tasks that members carry out.
- 2.101 Finally, we noted that between September 2006 and 31 March 2008, the government made 43 new appointments. This was not sufficient to compensate for departures and terms that expired. We were informed that as of 31 March 2008, there were 99 individuals on the IRB's list of recommended candidates.

Board vacancies have significantly contributed to the high number of unresolved cases

2.102 The high number of Board member vacancies at the IRB had a significant impact on the Board's capacity to process cases on a timely basis. The inventory of unresolved cases has reached an exceptionally high level.

2.103 As shown in Exhibit 2.5, between the first quarter of the 2004–05 fiscal year and the first quarter of 2006–07, the Refugee Protection Division, with a fairly full complement of members, was able to finalize more claims than the number of new ones referred to it. The Division was consequently able to reduce its inventory of unprocessed claims to fewer than 20,000 at the end of that period.

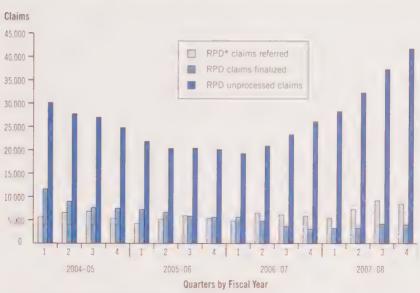


Exhibit 2.5 The inventory of unprocessed refugee claims more than doubled between 2006 and 2008

*RPD refers to Refugee Protection Division

2.104 Starting in the second quarter of 2006–07, there was a marked decline in the number of filled GIC positions, and the Division was not able to cope with its workload. As the situation evolved and the number of vacant positions remained high, the inventory of unprocessed claims more than doubled between 30 June 2006 and 31 March 2008, from 19,338 to 41,944. Updated figures obtained at the end of September 2008 indicate that the inventory surpassed 50,000 claims. The percentage of claims outstanding for more than one year increased from 21 percent to 31 percent between

- 31 March 2006 and 31 March 2008. During the same period, the average and median processing times went respectively from about 12 and 10 months to about 14 months for each.
- **2.105** At the Immigration Appeal Division, the number of appeals outstanding increased 20 percent in three years from 7,991 at the end of March 2005 to 9,602 at the end of March 2008. This represents the highest number of appeals awaiting a resolution since the establishment of the IRB. The average processing time of a claim increased from just over 9 months in 2005–06 to close to 10 months in the last quarter of 2007–08.
- **2.106** The ability to make decisions on a timely basis is critical to the fulfilment of the IRB's mandate—not being able to do so could have significant consequences for the claimant, the integrity of the immigration program, and the public purse.
- 2.107 Refugee claimants whose claims are ultimately accepted have often experienced very difficult circumstances in their country of origin and they are anxious to know whether Canada will offer them protection. People who have been refused permission to bring family members to Canada are also facing longer delays in having their appeals heard.
- 2.108 To prevent abuse of our immigration system, it is important that a refugee claim not be perceived as providing an automatic stay in Canada for a significant period of time. Applicants who are subject to a negative decision have access to a number of recourse procedures. They may apply for leave to seek judicial review of the negative IRB decision before the Federal Court, for a pre-removal risk assessment, or for permanent residence on humanitarian and compassionate grounds. Given the time now required to obtain a decision from the IRB and to go through these additional procedures, a person claiming refugee status could count on staying in Canada for at least two years.
- 2.109 In the last three fiscal years, 31,895 of 57,687 refugee claims (about 55 percent) were rejected by the IRB or withdrawn by the claimant. From the time claimants arrive in Canada, and for as long as they remain and their claim is making its way through the process, they qualify for many of the benefits granted to Canadians and landed immigrants, such as social assistance, legal aid, education, and health care. Lengthy delays in rendering decisions on unsupported claims therefore have significant cost implications for all levels of government.

The Board and its members receive late notification of appointment decisions

2.110 All GIC appointments at the IRB are now made to full-time positions. We expected that decisions on whether a member would be reappointed would be made and communicated in a timely manner. We were informed that it is the role of the Minister's office to do this.

2.111 The IRB has on a number of occasions publicly stressed the importance, from its perspective, of making and communicating appointment decisions well in advance of the expiry date of members' terms. The IRB considers that this would ensure that reappointed members remain actively focused on their adjudicative functions as independent decision makers, without interruption of active service. This would also provide members whose terms are not going to be renewed enough time to seek other full-time employment opportunities. The Public Appointments Commission Secretariat also stressed in its report the importance of timely communication of decisions and recommended that the government "undertake to keep potential candidates for appointment and re-appointment informed about their situation on an ongoing and timely basis. Board members whose term is coming up for renewal should be advised of the government's intent well in advance of the term's expiry."

2.112 We reviewed the communication of decisions to the 52 members whose terms were not renewed following a positive recommendation by the IRB. We found that 35 of them were informed in writing of that decision only after their term had expired. On average, they were informed 57 days after the expiry date. For the remaining 17 members, 10 were notified of the government's decision less than three weeks prior to their terms' expiry. In our view, these individuals should be treated in a more respectful manner.

2.113 We also expected that the IRB would be notified of appointment decisions on a timely basis. The IRB is not always informed of the start date negotiated with the new member. This can cause difficulties in arranging office space, managing the workload, and scheduling training. Each new appointee has to receive the Board's introductory training and it is difficult and costly to schedule individual courses.

Extensive training is provided to Board members

2.114 Given the particular nature of their positions and the expertise required of Board members, we expected that the required orientation and training would be identified and provided. We also expected that members would be informed of their expected standards of conduct as public office holders.

2.115 We found that the Board places considerable emphasis on the training of its new and existing members, and provides a complete training program that includes course training, ongoing professional development, information workshops, and mentoring. The training program is mandatory for all new members and ongoing professional development is mandatory for all members. This comprehensive program covers the key legal; procedural, and ethical components of a GIC appointee's role and is taught by experienced members, legal advisors, and other IRB staff.

2.116 From a legal and procedural perspective, the IRB reviews its training program and documentation whenever there are modifications to the *Immigration and Refugee Protection Act*, to supporting regulations and jurisprudence, or to IRB policies and rules.

2.117 Our review confirmed that all Board members are made aware of the federal government and IRB standards of behaviour and conflict of interest guidelines that apply to their position. All of them have agreed to these terms by signing the required documents, which are on file at the IRB, including, as appropriate, an oath of office and by making a commitment to observe the requirements of the *Conflict of Interest Act* and applicable ethical and political activity guidelines for public office holders. Exhibit 2.6 shows the progress made in addressing the recommendations in our 1997 chapter on the Immigration and Refugee Board.

Exhibit 2.6 Progress in addressing our recommendations at the Immigration and Refugee Board

December 1997 Report of the Auditor General, Chapter 25		
Recommendation	Progress	
The government should improve its practices for appointing Board members, in order to ensure that the Immigration and Refugee Board has a sufficient number of experienced decision makers available when they are needed, (paragraph 25.84)	Unsatisfactory	

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Conclusion and Recommendations

2.118 Our examination of the Governor in Council (GIC) appointment process focused on the support for the process provided by the Privy Council Office (PCO), departments, and the entities themselves. We did not audit the appointment decisions made by the Governor in Council or the roles played by ministers, ministers' offices, or the Prime Minister's Office. While overall, the government could demonstrate that it has management systems and procedures to provide for the timely appointment of individuals, results are disappointing. There are still lengthy delays in making appointments, resulting in vacancies and a high number of expired terms. These delays have the potential to compromise the effective governance and functioning of Crown corporations, small entities and the Immigration and Refugee Board of Canada. Moreover, issues related to the staggering of appointments have not been fully resolved.

2.119 Although management systems and procedures are in place, the processes to search for and assess candidates in Crown corporations and small entities do not reflect all the elements that we expected to find. The lack of communication among the PCO, ministers' offices, entities, and appointees has led to considerable frustration for entities and appointees. Communication to entities and appointees is especially poor. The complexity of the process and the involvement of multiple players make a clearly documented and consistent appointment process and effective communication among the stakeholders critical.

2.120 Some measures in the 2005 Governance Framework responded to concerns we had raised and have been implemented through improvements in areas such as orientation and training and the creation of the GIC appointments website to address transparency. However, many other measures have not been addressed and progress in responding to our 2000 and 2005 recommendations to improve the appointment process in Crown corporations is therefore unsatisfactory.

2.121 In our 1997 report on the IRB, we raised serious concerns about the high turnover among Board members and the delays in making appointments that resulted in a high number of vacant positions. While we noted improvements in our 2001 follow-up report, we observed the same issues in this audit.

2.122 The appointment process for IRB members has been modified twice in the last four years, but results are disappointing and the concerns remain. In fact, the number and percentage of vacant GIC

positions is higher than what we found 11 years ago. This high number of vacancies and the high level of turnover have significantly contributed to an exceptionally high inventory of unprocessed refugee claims and immigration appeals, resulting in costs to social programs, along with uncertainty for claimants wanting to start new lives in Canada. The government needs to ensure that in the future the IRB will be staffed in a timely manner with the required number of decision makers who have the knowledge, skills, and experience to carry out the Board's mandate and clear its significant inventory of unresolved cases.

2.123 The following are our recommendations to improve the GIC appointment process in Crown corporations, small federal entities, and the Immigration and Refugee Board.

2.124 Recommendation. The Privy Council Office should complete its project to determine the optimal complement of appointees for each Crown corporation.

The Privy Council Office's response. Agreed.

2.125 Recommendation. The government should clarify its expectation regarding the level of Crown corporation board involvement in director and CEO search and selection.

2.126 Recommendation. The government, supported by the Privy Council Office in view of its significant role in the GIC appointment process, should ensure that timely appointments are made to Crown corporations, small federal entities and the Immigration and Refugee Board of Canada.

2.127 Recommendation. The government should ensure that appointees (incumbents and applicants), Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada receive appropriate and timely communication of GIC appointment and reappointment processes and decisions.

The Privy Council Office's response to paragraphs 2.125 to 2.127. As these recommendations are directed toward the exercise of Governor in Council discretion, it would be inappropriate for the Privy Council Office to respond to each recommendation. However, PCO will continue to support the Government in the administration of the policies and processes the Government establishes for Governor in Council appointments. PCO will continue to provide guidance for deputy ministers, Crown corporations, small federal entities and the Immigration and Refugee Board of Canada on the roles and

responsibilities of stakeholders in the appointment process, in particular, on vacancy management and appropriate communication of GIC appointment and reappointment processes and decisions.

2.128 Recommendation. The Immigration and Refugee Board and the government, within their respective areas of responsibility, should determine an appropriate complement of members or other strategy to deal with the inventory of unprocessed refugee claims and unresolved immigration appeals on a timely basis, taking into account its current size and the projected number of new cases.

The Immigration and Refugee Board of Canada's response.

The Immigration and Refugee Board of Canada will continue to work cooperatively with the Minister of Citizenship, Immigration and Multiculturalism and officials of Citizenship and Immigration Canada in order that the government may determine an appropriate complement of members or other strategy to deal with the inventory of unresolved cases on a timely basis, taking into account the current and projected number of new cases.

About the Audit

Objectives

The objectives of the audit were to determine whether the government

- can demonstrate that it has management systems and procedures that provide for the timely appointment of qualified individuals to Crown corporations, small entities, and the Immigration and Refugee Board of Canada; and
- has made sufficient progress in implementing the recommendations made in our February 2005 Report, Chapter 7, and in our December 2000 Report, Chapter 18, on Governor in Council appointments to Crown corporations.

Scope and approach

We examined the appointment process for 43 Crown corporations, 52 small entities, and the Immigration and Refugee Board of Canada. For the purposes of this audit, we defined small federal entities as those with fewer than 500 employees (or full-time equivalents), or total annual funding of less than \$300 million. We excluded advisory bodies that meet from time to time and entities that had only been recently created and had not yet started operations.

We began by reviewing documentation and data from the Privy Council Office (PCO), from portfolio departments responsible for the entities to which our sample appointment files related, and from the 2005 Review of the Governance Framework for Crown Corporations tabled by the President of the Treasury Board. We collected data on all appointments as of 31 March 2008, including current appointees and vacancies from the PCO website and Crown corporation or entity websites. This list was updated as of 20 September 2008.

We provided our audit approach and criteria to PCO and asked officials to provide relevant information and files. We conducted interviews with key individuals at PCO and portfolio departments to determine the steps, roles, and responsibilities in the appointment process. We also conducted interviews with the heads of 14 small entities, and with chairs and CEOs of 23 Crown corporations. We examined the Immigration and Refugee Board's process and the outcome of the process in terms of timely, qualified appointments. In addition, we interviewed several former full-time appointees who had not been reappointed to ask them about their experiences and when they were notified that they would not be reappointed.

We asked entities to respond to an information-gathering instrument that we developed on the appointment processes for Crown corporation CEOs, board chairs, heads of small entities, Crown corporation directors, members of small entities, and tribunal members. We refer to the instrument in this chapter as a detailed questionnaire. Written responses to the questions were received between June and September 2008 and each was formally signed off by the CEO or agency head. Forty-one Crown corporations responded to questions regarding the process for board directors; 33 responded to questions about the process for CEOs; and 38 responded to questions regarding the process for chairs. For small entities, 51 entities responded to questions regarding their heads, and 37 responded to questions regarding members, including 18 tribunals and 19 non-tribunals.

We conducted a review of a sample of files at PCO of appointments that were made to all 43 Crown corporations and 39 of the 52 small entities between 1 January 2006 and 31 March 2008. We looked at files on 20 Crown corporation CEO or chair appointments, 20 Crown corporation director appointments, 18 small-entity head appointments, and 20 other small-entity appointments (such as tribunal members). For appointments other than CEOs, small-entity heads, and chairs, we also looked at the files kept by the departments.

In addition, we looked at appointment practices in other jurisdictions, in Canadian provinces and abroad, to identify different practices and approaches related to appointments to government corporations, agencies, and tribunals.

We did not conduct examination work in ministers' offices or in the Prime Minister's Office (PMO), but we did consider the relationship and communications between ministers, PMO, and PCO. We did not audit the actual appointment decisions that are made by the Governor in Council, but rather the process that leads to the decision.

Criteria

Listed below are the criteria that were used to conduct this audit and their sources.

Criteria	Sources			
Timely and Qualified Appointments				
We expected that each of the Governor in Council (GIC) appointment processes would be based on established qualifications.	Privy Council Office, Accountable Government: A Guide for Ministers and Secretaries of State (2007).			
We expected that the Privy Council Office (PCO) and departments would manage their respective responsibilities in the GIC appointment processes in a timely manner.	Financial Administration Act, Section 105.			
We expected that GIC appointments would be made in a timely manner.	Financial Administration Act, Section 105.			
We expected that appointments of board and tribunal members would be staggered to provide for continuity and experience.	Financial Administration Act and Treasury Board of Canada Secretariat, Review of the Governance Framework for Canada's Crown Corporations: Meeting the Expectations of Canadians (2005).			
We expected that PCO would ensure that a process is in place, where appropriate, to evaluate the performance achievements of GIC appointees for the purposes of making reappointment recommendations.	Privy Council Office, Governor in Council Process Guide (2004).			
Appointee Orient	ation and Training			
We expected that PCO, portfolio departments, Crown corporations, and entities would identify the required orientation and training needed by new appointees.	House of Commons, Protection of Public Assets—Office of the Correctional Investigator: Report of the Standing Committee on Public Accounts, February 2008.			
We expected that individual appointees would receive appropriate orientation and training regarding their duties and responsibilities.	House of Commons, Protection of Public Assets—Office of the Correctional Investigator: Report of the Standing Committee on Public Accounts, February 2008.			
We expected that appointees would be informed of their expected standards of conduct as public office holders.	House of Commons, Protection of Public Assets—Office of the Correctional Investigator: Report of the Standing Committee on Public Accounts, February 2008.			

Criteria	Sources			
Notification of Appointments				
We expected that PCO and departments would assess the length of notice of appointment decisions that is reasonable to permit candidates to manage their affairs.	Privy Council Office, The Role and Structure of the Privy Council Office (2007).			
We expected that full-time appointees would be informed of appointment decisions in a timely manner.	Privy Council Office, The Role and Structure of the Privy Council Office (2007).			
We also expected that full-time appointees would be informed of reappointment decisions in a reasonably timely manner.				
Implementation of Recommen	ndations from Previous Reports			
We expected that the government would have taken steps to address the recommendations that we made regarding GIC appointments in Crown corporations in our 2000 and 2005 reports on Governance in Crown Corporations.	February 2005 Auditor General's Report, Chapter 7, Governance of Crown Corporations, paragraphs 7.101 and 7.102; the government's response to our recommendations on page 22; and December 2000 Auditor General's Report, Chapter 18, Governance of Crown corporations, recommendations at paragraphs 18.45, 18.54, 18.59, 18.78, and 18.79.			
We expected that the government would have implemented the measures identified in its response to our recommendations made in our February 2005 report regarding GIC appointments in Crown corporations, or developed and implemented new measures in response to our recommendations, in keeping with the current government's approach.	February 2005 Auditor General's Report, Chapter 7, Governance of Crown Corporations, paragraph 7.101.			

Audit work completed

Audit work for this chapter was substantially completed on 30 September 2008.

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Appendix A List of recommendations

The following is a list of recommendations found in the Conclusion and Recommendations section of Chapter 2.

Recommendation	Response
2.124 The Privy Council Office should complete its project to determine the optimal complement of appointees for each Crown corporation.	The Privy Council Office's response. Agreed
 2.125 The government should clarify its expectation regarding the level of Crown corporation board involvement in director and CEO search and selection. 2.126 The government, supported by the Privy Council Office in view of its significant role in the GIC appointment process, should ensure that timely appointments are made to Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada. 2.127 The government should ensure that appointees (incumbents and applicants), Crown corporations, small federal entities and the Immigration and Refugee Board receive appropriate and timely communication of GIC appointment and reappointment processes and decisions. 	The Privy Council Office's response to paragraphs 2.125 to 2.127. As these recommendations are directed toward the exercise of Governor in Council discretion, it would be inappropriate for the Privy Council Office to respond to each recommendation. However, PCO will continue to support the Government in the administration of the policies and processes the Government establishes for Governor in Council appointments. PCO will continue to provide guidance for deputy ministers, Crown corporations, small federal entities and the Immigration and Refugee Board of Canada on the roles and responsibilities of stakeholders in the appointment process, in particular, on vacancy management and appropriate communication of GIC appointment and reappointment processes and decisions.
2.128 The Immigration and Refugee	The Immigration and Refugee Board of Canada's response.

2.128 The Immigration and Refugee Board and the government, within their respective areas of responsibility, should determine an appropriate complement of members or other strategy to deal with the inventory of unprocessed refugee claims and unresolved immigration appeals on a timely basis, taking into account its current size and the projected number of new cases.

The Immigration and Refugee Board of Canada's response. The Immigration and Refugee Board of Canada will continue to work cooperatively with the Minister of Citizenship, Immigration and Multiculturalism and officials of Citizenship and Immigration Canada in order that the government may determine an appropriate complement of members or other strategy to deal with the inventory of unresolved cases on a timely basis, taking into account the current and projected number of new cases.

Appendix B Crown corporations and entities included in our audit

Crown corporations	Small Entities
Atlantic Pilotage Authority Canada*	Administrative Monetary Penalties Review Tribunal
Atomic Energy of Canada Limited	Assisted Human Reproduction Canada
Bank of Canada	Canada Industrial Relations Board
Blue Water Bridge Canada	Canada Pension Plan/Old Age Security Review Tribunals
Business Development Bank of Canada	Canada School of Public Service
Canada Council	Canadian Artists and Producers Professional Relations Tribunal
Canada Deposit Insurance Corporation	Canadian Centre for Occupational Health and Safety
Canada Development Investment Corporation	Canadian Cultural Property Export Review Board
Canada Lands Company Limited	Canadian Environmental Assessment Agency
Canada Mortgage and Housing Corporation	Canadian Forces Grievance Board
Canada Pension Plan Investment Board*	Canadian Human Rights Commission
Canada Post Corporation	Canadian Institutes of Health Research
Canada Science and Technology Museum	Canadian Intergovernmental Conference Secretariat
Canadian Air Transport Security Authority*	Canadian International Trade Tribunal
Canadian Broadcasting Corporation	Canadian Nuclear Safety Commission
Canadian Commercial Corporation	Canadian Polar Commission
Canadian Dairy Commission	Canadian Radio-television and Telecommunications Commissio
Canadian Museum of Civilization	Canadian Transportation Agency
Canadian Museum of Nature	Citizenship Commission
Canadian Race Relations Foundation	Competition Tribunal
Canadian Tourism Commission	Copyright Board Canada
Cape Breton Development Corporation	Courts Administration Service
Defence Construction (1951) Limited	Financial Consumer Agency of Canada
Enterprise Cape Breton Corporation**	Financial Transactions and Reports Analysis Centre of Canada
Export Development Canada	Hazardous Materials Information Review Commission Canada
Farm Credit Canada	Human Rights Tribunal of Canada
Freshwater Fish Marketing Corporation	Military Police Complaints Commission of Canada
Great Lakes Pilotage Authority Canada*	NAFTA Secretariat—Canadian Section
International Development Research Centre	National Battlefields Commission
Laurentian Pilotage Authority Canada*	National Defence and Canadian Forces Ombudsman
Marine Atlantic Inc.	National Energy Board
National Arts Centre Corporation*	National Farm Products Council
National Capital Commission	National Film Board
National Gallery of Canada	National Parole Board
Pacific Pilotage Authority Canada*	National Round Table on the Environment and the Economy

Crown corporations	Small Entities
Parc Downsview Park Inc.	Office of Federal Ombudsman for Victims of Crime
Public Sector Pension Investment Board*	Office of the Commissioner for Federal Judicial Affairs**
Ridley Terminals Inc.	Office of the Co-ordinator, Status of Women Canada
Royal Canadian Mint	Office of the Superintendent of Financial Institutions Canada
Standards Council of Canada	Patented Medicine Prices Review Board
Telefilm Canada	Public Service Labour Relations Board
The Federal Bridge Corporation Limited	Public Service Staffing Tribunal
Via Rail Canada Inc.	Royal Canadian Mounted Police External Review Committee
	Royal Canadian Mounted Police Public Complaints Commission
	Science and Engineering Research Canada
	Security Intelligence Review Committee
	Ship-source Oil Pollution Fund
	Social Sciences and Humanities Research Council of Canada
	The Correctional Investigator Canada
	Transportation Appeal Tribunal of Canada
	Transportation Safety Board of Canada
	Veterans Review and Appeal Board

^{*} For these entities, the CEO is not a Governor in Council appointment.
** These entities did not respond to our information-gathering instrument.



Status Report of the Auditor General of Canada to the House of Commons—2009

Main Table of Contents

Main Points—Chapters 1 to 5
Appendix

Chapter 1 National Security: Intelligence and Information Sharing

Chapter 2 Governor in Council Appointments Process

Chapter 3 Auditing Small and Medium Enterprises—Canada Revenue Agency

Chapter 4 Treaty Land Entitlement Obligations—Indian and Northern Affairs Canada

Chapter 5 Passport Services—Passport Canada

Message from the Auditor General of Canada







Status Report
of the
Auditor General of Canada
to the House of Commons

Par days

Chapter 3
Auditing Small and Medium Enterprises—
Canada Revenue Agency



Office of the Auditor General of Canada



2009



Status Report of the Auditor General of Canada to the House of Commons



Chapter 3

Auditing Small and Medium Enterprises— Canada Revenue Agency The 2009 Status Report of the Auditor General of Canada comprises a Message from the Auditor General of Canada, Main Points—Chapters 1 to 5, an appendix, and five chapters. The main table of contents for the Report is found at the end of this publication.

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Chapter

3

Auditing Small and Medium Enterprises Canada Revenue Agency

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by The Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.
for our dualts, we also draw upon the surrounds and practices of other disciplines.

Table of Contents

Main Points	1
Introduction	5
What we found in 1999	
What we found in 2004	6
Important changes since previous audits	7
Focus of the audit	8
Observations	
Obsol vations	9
Assessing the risks of non-compliance	9
Two initiatives strengthen compliance research and monitoring	9
Core (random) Audit Program has not been strengthened	11
Risk assessment systems were not regularly validated and lack information	13
Targeting taxpayers to audit	17
Many designated low-risk files are being selected for audit	17
No unreported income detected in many underground economy audits	19
Progress was mixed in addressing two identified compliance problems	19
More industry sectors included in underground economy audits	20
Promoting compliance	22
Outreach activities continued, but the approach needs to be strategic	22
New national approach planned to promote compliance and taxpayer awareness	23
Measuring performance	25
The Agency tracks additional gross income but has not reported it	25
The Agency needs indicators and targets for the Small and Medium Enterprises Program	26
Conclusion	28
About the Audit	30





Auditing Small and Medium Enterprises

Canada Revenue Agency

Main Points

What we examined

The primary goal of the Canada Revenue Agency as Canada's tax administrator is to ensure that taxpayers comply with their obligations and that Canada's tax base is protected. The Agency's Small and Medium Enterprises (SME) Program and the Underground Economy Initiative, which is part of the Program, are designed to deal with the risk of non-compliance with tax laws. Of the 5,600 Agency employees who carry out compliance activities in the SME Program, more than 1,000 work on the Underground Economy Initiative.

The underground economy is defined for tax purposes as activities that result in income earned but not reported. This can include illegal activities such as smuggling, drug trafficking, and money laundering, but also "hidden" legal transactions in goods and services. The Underground Economy Initiative deals with hidden legal transactions. Other Agency programs deal with illegal activities, non-filers, and non-registrants.

We audited the Underground Economy Initiative in 1999 and the SME Program in 2004. For this chapter, we followed up on selected areas of those audits. We examined the progress made by the Agency in implementing our previous recommendations on assessing the risks of non-compliance, targeting SME taxpayers to audit for compliance, promoting compliance, and measuring the performance of its compliance activities. Our conclusion about the Agency's overall progress was based on the relative importance of each recommendation, the complexity of implementing it, and the length of time the Agency has had since the original audit to implement the recommendation.

Why it's important

The revenues that the Canada Revenue Agency collects are used to fund government programs across Canada. Compliance with tax laws contributes to the economic and social well-being of all Canadians.

The Agency believes that the incidence of non-compliance is relatively low but financially significant. The results of its compliance program activities in the 2006–07 fiscal year accounted for an estimated \$12.7 billion in additional taxes, close to \$2.5 billion of which was related to small and medium enterprises. The Agency has said that

growing self-employment, globalization of the economy, and growing use of information technology to conduct business have increased the challenges of combating non-compliance. Furthermore, businesses that do not report all the income they earn put businesses that do at a competitive disadvantage and cause honest taxpayers to bear the tax load of those who cheat.

What we found

- Overall, the Agency has made unsatisfactory progress in addressing the recommendations we selected from our previous reports for follow-up. Progress on 7 of the 13 recommendations is satisfactory. However, of the 13 recommendations, we considered 6 to be the most important and progress was unsatisfactory on 4 of those 6 recommendations.
- Progress is unsatisfactory on three key recommendations aimed at improving how the Agency assesses the risks of non-compliance and targets taxpayer files to audit for unreported income. About half of its underground economy audits over the past five years did not detect unreported income, and the amount of unreported income that has been detected has remained relatively constant. Low-risk files represent a far higher proportion of audited files than those rated as high-risk by the Agency's computerized risk assessment system. Although a study by the Agency found that its file screeners needed to have more confidence in the accuracy of the computerized risk ratings, the Agency has done little to validate those ratings. The Agency has also failed to strengthen its Core (random) Audit Program. The results of a strengthened program could be used to improve the computerized risk assessment system.
- The Agency has made significant progress in reviewing all of the threats to the tax base. One of the four biggest threats it identified is the underground economy, and the Agency has developed an action plan to address it. It has also developed a Compliance Measurement Framework to improve how it monitors compliance. In addition, it has prepared a compliance monitoring report each year using the indicators in the Framework.
- The Agency has increased its outreach activities to promote compliance and taxpayer awareness of what the underground economy costs society. It has also recently developed its first national compliance communications strategy on this subject.

• Despite a commitment to do so, the Agency still does not report additional taxes on unreported income that are identified by its audit activities.

The Agency has responded. The Agency does not agree that its overall progress in addressing our recommendations is unsatisfactory. It believes that we have placed too much emphasis on certain recommendations in arriving at our conclusion.



Introduction

- 3.1 The mission of the Canada Revenue Agency (the Agency) is to administer tax, benefits, and related programs and to ensure compliance on behalf of governments across Canada, thereby contributing to the ongoing economic and social well-being of Canadians. As Canada's tax administrator, the Agency's primary goal is compliance—ensuring that taxpayers meet their obligations and protecting Canada's tax base.
- 3.2 Non-compliance matters to Parliament and to all Canadians because the revenues that the Agency collects are used to fund government programs across Canada. The Agency has plans and programs to manage the risks of non-compliance. In 1999, we audited the Agency's Underground Economy Initiative, and in 2004, we audited the Agency's compliance activities directed toward small and medium enterprises.
- 3.3 For tax purposes, the underground economy is commonly defined as activities that result in income that taxpayers have earned but not reported. This may include illegal activities, such as smuggling, drug trafficking, and money laundering, as well as legal transactions in goods and services that are hidden, resulting in under-reporting of taxes. Furthermore, businesses that do not report all the income they earn put businesses that do at a competitive disadvantage and cause honest taxpayers to bear the tax load of those who cheat. With respect to the underground economy, the Agency's program dealing with small and medium enterprises addresses the legal but hidden transactions for enterprises that file returns. Other Agency programs deal with illegal activities, non-filers, and non-registrants.
- 3.4 The Agency strives to achieve high levels of compliance by taxpayers to protect Canada's tax base. It believes that the incidence of non-compliance is relatively low. However, the results of its compliance program activities demonstrated that such non-compliance is, in total, financially significant. As stated in its 2006–07 Annual Report, the Agency identified an estimated \$12.7 billion in additional taxes, close to \$2.5 billion of which was related to small and medium enterprises. In the Agency's Small and Medium Enterprises Program, there are more than 5,600 full-time employees doing audits and other compliance activities. More than 1,000 of those employees worked on activities concerning the underground economy.
- 3.5 The underground economy intersects with the small and medium enterprise sector. In particular, two of the underground

Small enterprises—Individuals who are in business, trusts, and private corporations with less than \$1 million in annual revenues.

Medium enterprises—Individuals who are in business with annual revenues greater than \$1 million and corporations with annual revenues between \$1 million and \$50 million.

economy risk indicators—cash transactions and poor accounting records—are often present in small enterprises.

What we found in 1999

- 3.6 In 1999, we examined the way the Agency implemented its Underground Economy Initiative. We reported that
 - the actual tax recoveries attributable to the detection of unreported income were much less than the \$500 million that the Agency reported to Parliament;
 - it was difficult to assess the overall success of the Initiative in combating the underground economy, because the Agency had not identified indicators for measuring the Initiative's performance;
 - the Agency had not assessed the role that social marketing might play in making the public aware of the costs of the underground economy to society;
 - as planned, the Initiative took a balanced approach, in our view.
 But as implemented, the Initiative was not balanced, because all of its resources were allocated to enforcement; no public awareness activities were carried out, and activities designed to promote businesses' voluntary compliance declined over time; and
 - the Agency had committed to conducting research to support its enforcement activities and its choice of four targeted sectors, but the research was incomplete.
- 3.7 The Standing Committee on Public Accounts issued a report recommending that the Agency address the issues raised in our 1999 audit of the Underground Economy Initiative. In response to this report, the Agency agreed to increase its community visits and build relationships with private sector associations. It also committed to improving its performance reporting to Parliament regarding these visits and partnerships, and regarding its social marketing efforts and progress on the Initiative. In addition, the Agency agreed that it should record and report the additional gross income and taxes identified by the Initiative.
- 3.8 We followed up on the status of implementation of the 1999 recommendations in 2001. We concluded that the Agency had been working to address the recommendations, but that several areas continued to require attention, such as identifying and reporting performance indicators, reporting results of detection of unreported income, and targeting high-risk files for audits of unreported income.

What we found in 2004

- **3.9** In 2004, we examined the activities of the Agency's small and medium enterprise audits. We reported the following:
 - The Agency's aim was to improve compliance, but it did not have the necessary information to measure compliance over time and the effectiveness of its activities. The Agency was developing a Compliance Measurement Framework and related measures/indicators.
 - Forty percent of all small and medium enterprises audited in a given year had little or no potential tax at risk, according to the Agency's computerized risk assessment system.
 - Audits of taxpayers the system identified as having high potential for non-compliance yielded much higher reassessments than audits selected by other means.
 - The Core (random) Audit Program is important for determining the degree, the nature, and the causes of non-compliance. The Agency had been slow to assess the results of the Program, and had to suspend it in 2004.

Important changes since previous audits

- **3.10** In 2006, the Compliance Programs Branch was reorganized following a functional review. This reorganization brought together all the small and medium enterprise issues and services for the Branch, including underground economy activities, into one directorate.
- **3.11** The Agency has said that recent trends in self-employment, globalization of the economy, and information technology have increased its challenges in combating non-compliance. Studies carried out since 2004 have indicated that
 - what people hear and feel about how the government spends their taxes is linked to how they feel about tax compliance;
 - the public perceives the prevalence of the underground economy as high; and
 - tax practitioners regard the underground economy as a major problem, but as long as society generally accepts it, solving this problem will be a challenge.

Focus of the audit

- 3.12 This audit followed up on selected recommendations from our 1999 and 2004 audits that dealt with four themes—assessing and addressing the risks of non-compliance, targeting taxpayers to audit for compliance, promoting compliance in the underground economy, and reporting on performance. We therefore followed up on 13 of the 21 recommendations (main and sub-sections included) originally reported. We considered 6 of the 13 recommendations, found in Exhibits 3.1, 3.2, 3.3, 3.7, 3.9, and 3.11, to be the most important. We did not follow up on the other eight recommendations, all found in Chapter 5 of the March 2004 Report of the Auditor General of Canada, because they relate to other subjects. Nor did we cover areas in the Small and Medium Enterprises Program and the Underground Economy Initiative that were not related to our previous recommendations.
- 3.13 Our audit focus was to assess whether the Agency had made satisfactory progress in implementing the selected recommendations from the previous reports and in addressing the issues related to those recommendations. In particular, we assessed whether the Agency can demonstrate that it
 - has systems and practices in place to assess and address the risks of non-compliance in the small and medium enterprise sector, including those participating in the underground economy;
 - selects and audits small and medium enterprises of high risk or priority;
 - promotes taxpayer awareness of income reporting obligations through outreach and communications in the underground economy; and
 - develops appropriate measures and reports on the effectiveness of its small and medium enterprise compliance program activities.
- 3.14 More details on the audit objective, scope, approach, and criteria are in About the Audit at the end of this chapter.

Observations

Assessing the risks of non-compliance

Two initiatives strengthen compliance research and monitoring

- 3.15 Our 2004 Report recommended that the Canada Revenue Agency (the Agency) ensure that it identify and consider all threats to the tax base in a consistent manner. The Agency agreed and committed to developing a Compliance Measurement Framework and to undertaking monitoring and research to identify compliance trends and problems.
- 3.16 Compliance Measurement Framework. The Agency developed the Compliance Measurement Framework, a tool for monitoring and measuring compliance, to evaluate and refine approaches to addressing compliance issues. The Framework is intended to provide greater focus and more rigour to compliance research and strategic analysis. It is also intended for use as a basis for research planning, monitoring, and reporting. The Framework was fully implemented in the 2004–05 fiscal year. It includes many indicators that the Agency can use to monitor compliance trends and adjust its compliance strategies.
- **3.17** Compliance monitoring reports, consisting of the analysis of compliance indicators, the socioeconomic context of tax compliance, and the monitoring and contextual analysis of relevant public opinion research, have been prepared annually since the implementation of the Framework.
- 3.18 The Framework has also been used to guide the Agency's compliance research agenda. The agenda has three main areas of research: compliance monitoring, baseline research to identify emerging issues and trends, and program studies. While the research done has helped the Agency understand compliance trends and the factors that influence compliance, we found that the Agency's overall approach to compliance research needs more rigour. For example, the Agency
 - has not updated its formal compliance research agenda since 2006, despite intentions to update the agenda on an ongoing basis;
 - has kept virtually no records since 2004 to show that research proposals were evaluated in a consistent manner before being accepted or rejected, although an evaluation framework is in place; and

 did not track its use of research results to ensure that, where such actions were appropriate, new insights were incorporated into its risk assessment systems.

These elements limit the effectiveness of the Agency's compliance research, which plays an important role in understanding the risks of non-compliance.

- 3.19 The Agency is currently taking steps to improve. For example, it recently reviewed the roles and responsibilities of its compliance research and risk assessment program in the Compliance Programs Branch and outlined a plan to enhance and integrate risk and research activities over the next two years.
- 3.20 Compliance review. In 2005, the Agency also completed a comprehensive review of the risks to the Canadian tax base. This review identified four major risks that the Agency needed to focus on: aggressive tax planning, GST/HST non-compliance (and fraud), the underground economy, collections, and non-filers/non-registrants. With respect to the underground economy, we note that since then, the Agency has developed a strategy with an action plan that includes 28 items grouped under 5 themes:
 - strengthening Agency-wide capacity,
 - providing effective direction of compliance work,
 - producing effective communications,
 - · increasing engagement with stakeholders, and
 - · increasing research capacity.
- 3.21 The Agency is implementing its action plan for the underground economy, but we found that it is not systematically tracking its progress on action items, an important step given that the commitments are comprehensive and long-term. Nor has it done an overall assessment of the actions it took and how they met expectations.
- 3.22 The development of the Compliance Measurement Framework and the compliance review were positive steps in identifying major compliance risks, and we have rated progress in implementing our recommendation as satisfactory (Exhibit 3.1).

Exhibit 3.1 Progress in addressing our recommendation on threats to the tax base

March 2004 Report of the Auditor General of Canada, Chapter 5	
Recommendation	Progress
The Agency should ensure that all threats to the tax base are identified and considered in a consistent manner (adapted from paragraph 5.32)	Satisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made

Core (random) Audit Program has not been strengthened

- 3.23 The Agency also obtains information about the compliance of the small and medium business population through its Core Audit Program, which was first implemented in 1999. The Program selects a random sample of taxpayers' returns every year and is intended to
 - measure the non-compliance rates as a basis for monitoring compliance trends over time;
 - provide information to validate and refine the Agency's risk assessment systems;
 - identify the types of and reasons for error that taxpayers make in calculating tax liabilities and entitlements; and
 - improve compliance strategies, such as profiles, indicators of risk, and compliance instruments.
- 3.24 In our 2004 Report we noted that the Agency had been slow to assess the results of the Program and had to suspend it in 2004. We recommended that the Agency strengthen the Core Audit Program by developing a multi-year plan to cover specific segments of the population, and by setting deadlines for completion of the audit work and the analysis of results. The Agency agreed with our recommendation and also committed to taking steps to improve the integrity of its data collection.

- 3.25 The Agency developed a multi-year schedule of the segments of the small and medium enterprise population that would be audited each year and set expected timelines for completion of the work and analysis. However, this schedule provided no details on the objectives of the Core Audit Program, the reasons for selecting particular segments of the small and medium enterprise population, and the planned approach to the audits.
- 3.26 At the time of the 2004 audit, we reported that only the analysis of the 1999 Core Audit Program had been completed and the analysis of the subsequent years' results had not begun. In this audit, we found that since 2004, the Agency has completed its Core Audit Program reports for 2000 to 2005, although none were completed on time. The results of Program audits for 2006 and 2007 have yet to be analyzed by the Agency. We also found that the Agency had difficulty coordinating the completion of the random audits, both at headquarters and at tax services offices. In the tax services offices we visited, we found a lack of buy-in to completing these priority audits. Therefore, we have assessed progress in implementing our recommendation to strengthen the Core Audit Program as unsatisfactory (Exhibit 3.2).

Exhibit 3.2 Progress in addressing our recommendation on strengthening the Core Audit Program

March 2004 Report of the Auditor General of Canada, Chapter 5	
Recommendation	Progress
The Agency should strengthen the Core Audit Program by developing a multi-year plan to cover specific segments of the population, and set deadlines for the completion of the audit work and the analysis of results. (adapted from paragraph 5.44)	Unsatisfactory

and the time that has elapsed since the recommendation was made.

Unsatisfactory - Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

3.27 Other concerns with the Core Audit Program. We found that the only Program objective that the Agency had been able to achieve was measurement of the non-compliance rate. But even then, we found for most years that random audits in statistically significant numbers were not completed by the pre-established deadlines. If the results of such audits were known, they might affect the non-compliance rate estimate and require it to be adjusted. For this reason, the estimate may not be a reliable performance measure, especially when it is used to assess and report on the effectiveness of the Agency's compliance program activities.

3.28 We also found that the sample size was larger than needed to calculate a national non-compliance rate. The Agency chose a sample of 1,000 to 1,700 audits each year, whereas a smaller sample of about 400 would allow an estimate at a national level. The Agency chose the larger sample so that the Program could meet all of its objectives. Despite its use of a large sample, the Program has not produced any reliable information to validate and refine the Agency's risk assessment systems or to provide new insights into risk factors and the underlying causes of non-compliance.

Risk assessment systems were not regularly validated and lack information

- 3.29 Our 2004 Report recommended that the Agency undertake regular studies to validate the effectiveness of computerized and manual risk assessment systems. The Agency agreed, noting that such studies were already being done and promising to continue to conduct them.
- **3.30** The Agency has made ongoing changes to the computerized risk assessment systems since 2004, but the changes were not documented fully, so it is impossible to tell whether the analysis of research information and audit results is being used to update the systems. More important than documenting changes is the need to regularly validate those systems.
- 3.31 We found that the Agency completed the reports on the two comprehensive validation studies that were in draft form at the time of our 2004 audit. Those studies covered the 2000 taxation year and showed that there was a significant positive relationship between the taxes the system estimated could be reassessed on audit and those that were actually reassessed following an audit. The Agency has not conducted any similar studies since then and does not have a plan to do regular studies to validate its computerized risk assessment systems. We note, however, that the Agency has done some ad hoc studies since 2004 to test certain aspects of its computerized risk assessment systems. It also did a study on the screening process for audit selection that provided useful information on its manual assessment systems.
- **3.32** As noted later on in this chapter, it is important for the Agency to validate its risk assessment systems regularly to provide the assurance that the risk ratings of taxpayer files are correct. Such ratings are essential for targeting potential non-compliant taxpayers and for building confidence in the accuracy of the systems' assessments for people who use them. In our view, the Agency has not made satisfactory progress in addressing our recommendation on validating its risk assessment systems (Exhibit 3.3).

Taxation year—Generally, a calendar year for individuals and a fiscal period for corporations.

Exhibit 3.3 Progress in addressing our recommendation on computer-based and manual risk evaluation systems

Recommendation	Progress
The Agency should undertake regular studies to validate the effectiveness of computer-based and manual risk evaluation systems. (adapted from paragraph 5.55)	Unsatisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

- 3.33 Our 1999 and 2004 Reports made three other recommendations to improve the Agency's systems for identifying non-compliant small and medium enterprises:
 - Link the tax returns of companies or individuals that do not operate at arm's length to determine their potential tax at risk as a group, and add information to enable the calculation of income tax at risk for trusts and large partnerships.
 - Capture additional information on audit results and analyze that information to gather further insights into taxpayer behaviour, reasons for non-compliance, and methods of detection.
 - Collaborate with other levels of government and other partners to access the data that can be used to detect unreported income.
- 3.34 The Agency agreed with these recommendations and has committed to improving its systems for identifying non-compliant small and medium enterprises. Since 2002, it has been working on the Compliance Systems Redesign (CSR) project, a comprehensive suite of information technology solutions to manage compliance programs more effectively. CSR is expected to cost about \$100 million and includes several components designed to improve the Agency's systems for identifying non-compliant small and medium enterprises and selecting them for audit. The original forecast completion date for the project was 2007, but this date has been extended to 2011. A pilot of a few CSR applications was launched in October 2008. The first of three releases of applications is expected to take place in October 2009.
- 3.35 Linking tax returns. We found that, as in 2004, the Agency is able to link the tax returns of a group of companies or individuals that do not operate at arm's length. However, due to software limitations

and the complexity of the calculation, it is only able to estimate the potential tax at risk for the group through a rough manual calculation. The Agency believes that it will be able to automate this calculation as part of its Compliance Systems Redesign.

- **3.36** The Agency has added more information on trusts and partnerships to its systems to allow better risk assessment of these taxpayers. For example, it now requires partnerships to file returns very similar to those that corporations file. As well, it is capturing information on income allocated to beneficiaries of trusts.
- 3.37 Capturing additional information. The Agency has also made some progress in collecting information related to methods of detecting non-compliance. Tax services offices capture information related to the use of indirect verification of income techniques, which is an audit approach for determining whether individuals or businesses not maintaining reliable accounting records have reported all of their income for tax purposes. These taxpayers are often small enterprises found in sectors where cash transactions are common. The techniques involve analyzing bank deposits and assessing net worth to estimate a taxpayer's income. This information is useful to the Agency because it tracks whether tax services offices are using these audit techniques for identifying non-compliant small and medium enterprises.
- 3.38 The Agency has not made much progress in capturing additional information on audit results and analyzing that information to gather further insights into the reasons for non-compliance. Capturing information on audit results is part of the Compliance Systems Redesign project. There are therefore opportunities to include information on the reason for audit adjustments and the auditor's judgment of the nature and cause of the non-compliance to improve the Agency's understanding of non-compliance. There is also an opportunity to include the capacity to compare the risk assessment system's estimate of tax at risk against actual audit results to quickly validate the system. At the time of the audit, the redesign project was still under development.
- 3.39 Collaborating with others. Since 1999, the Agency has continued to collaborate with other levels of government to enhance strategies to combat the underground economy. We noted that projects for information sharing were launched between the Agency and several provincial governments and included some municipal sectors and professional or trade associations in those provinces. As a result, the Agency has been able to use data from these sources to identify possible underground economy activities—for example, taxpayers

whose reported incomes were not enough to support their purchases of large assets such as real estate. The Agency still needs to pursue collaborative projects with the remaining provinces and territories.

3.40 In 2006, the Agency initiated a project to gain better access to data held by other government bodies for administration and enforcement of federal, provincial, and territorial taxes. The project's working group noted that there had been a reluctance to request information. It is now seeking ways to resolve this problem. The project is scheduled to be completed by March 2009.

3.41 The Agency has made satisfactory progress in implementing two of our recommendations to improve its systems for identifying non-compliant small and medium enterprises; however, for the other recommendation, progress is unsatisfactory (Exhibit 3.4).

Exhibit 3.4 Progress in addressing our recommendations on identifying non-compliant small and medium enterprises

Progress
Satisfactory
Unsatisfactory
Satisfactory

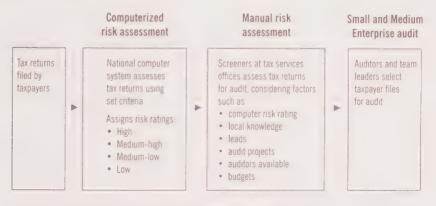
Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Targeting taxpayers to audit

Many designated low-risk files are being selected for audit

- 3.42 As part of this follow-up audit, we examined the extent to which high-risk files are selected for audit in the Small and Medium Enterprises Program. Appropriate identification and selection of taxpayers for audit requires reliable risk assessment systems. The national computer system of the Canada Revenue Agency (the Agency) assesses taxpayers, assigning them risk ratings between high and low, based on the potential amount of tax that could be recovered. Each tax services office considers this risk rating as well as other factors when selecting its own files for audit (Exhibit 3.5). The risk ratings are as follows:
 - High—more than \$50,000 in potential tax recovery;
 - Medium-high—\$10,000 to \$50,000 in potential tax recovery;
 - Medium-low—\$1 to \$10,000 in potential tax recovery; and
 - Low—\$0 potential tax recovery.

Exhibit 3.5 Tax returns are selected for audit using computerized and manual risk assessment systems



Source: Adapted from Canada Revenue Agency process information

3.43 We found that many of the files audited had not been designated as high-risk by the national computer system. Over a two-year period from fiscal year 2006–07 to fiscal year 2007–08, the Agency audited about 87,000 small and medium enterprise files. Thirteen percent of those files had been designated as high risk by the computer system and they earned 41 percent of the total tax recoveries of the Small and Medium Enterprises Program. At the same time, about 56 percent of the 87,000 audits were designated as zero or low risk by the system, yet these files earned 39 percent of the Program's total tax recoveries (Exhibit 3.6).

Exhibit 3.6 Both high- and low-risk files earned significant tax recoveries

Risk Level	% of audited files	% of tax recoveries
нgi	13	41
Medium-high	lo	11
Medium-low] F.	9
L:W	÷ _y r̂y	39
Total	100	100

Source: Office of the Auditor General analysis based on Canada Revenue Agency statistics

- 3.44 Agency officials offered several possible explanations as to why so many designated low-risk files are chosen and yet produce large tax recoveries:
 - Auditors are following up on information that a taxpayer may be non-compliant obtained from sources other than the national computer system.
 - Auditors are working on projects that deal with new and emerging issues that are not yet built into the national computer system.
 - The Agency seeks to maintain an audit presence, across all industry sectors and types of taxpayers, to deter non-compliance.
 It chooses some lower-risk files to achieve this objective and some of them produce large recoveries.
 - Available auditors may lack the experience necessary to do complex high-risk files and therefore audit lower-risk files. Some of those files produce large recoveries.
- 3.45 The findings of a 2007 study supported these explanations. This study was on the audit selection process to identify why screeners in tax services offices were not consistently selecting taxpayer files with similar risk ratings for audit. Screeners are not required to document their decisions; therefore, the Agency does not regularly know the reasons for not selecting designated high-risk files. The study found that there is a large discrepancy between screeners' and the system's perception of tax at risk. Sometimes this discrepancy is due to local knowledge about a taxpayer that is not available on the national computer system. The study notes that screeners need to have more confidence in the accuracy of the system's risk estimates. In our view, greater confidence would contribute to audit efficiency allowing screeners to rely on the system's risk estimates and focus only on those

files that require further manual screening for audit selection. The study's findings and our own underscore the urgent need for regularly validating computerized risk assessments.

3.46 The Agency believes that its Compliance Systems Redesign project will improve its ability to target non-compliant taxpayers and select appropriate files for audit because it will include better risk assessment tools and the capability for screeners to add comments and feedback on the risk assessments. At the time of our audit, the redesign project was still under development.

No unreported income detected in many underground economy audits

- 3.47 Our 1999 Report recommended that the Agency improve the way it targets and selects income tax files to audit, to increase the effectiveness of the audit activities in its Underground Economy Initiative. The Agency agreed with our recommendation. It said that tax files the computer system designated as high risk for unreported income would be the basis for selecting files to audit.
- **3.48** We found that the Agency has not developed any specific guidelines to help ensure that screeners select more high-risk files for audit. Furthermore, we note that headquarters' instructions to tax services offices state that the percentage of low-risk files being audited is too high.
- 3.49 In 1999, we found that about 40 percent of the audit files we selected for review did not involve unreported income. The Agency's data show that, over the last five years, about 50 percent of the underground economy audits did not detect unreported income. This result is troubling because files selected for underground economy audits are expected to have a high risk of unreported income. Furthermore, the Agency's data show that the total amount of unreported income detected in its audits has remained relatively constant at about \$550 million annually over the past five years.

Progress was mixed in addressing two identified compliance problems

3.50 Better audit selection also requires the Agency to address compliance problems promptly to improve the identification of unreported income. We note that progress in addressing two compliance problems that existed at the time of our last audit was mixed. The Agency made good progress on the Contract Payment Reporting System.

Contract Payment Reporting System allows the Agency to better target non-compliance

The Agency identified compliance problems in the construction and home renovation sectors and developed the Contract Payment Reporting System. It launched the System on a voluntary basis in 1996. When it deemed the voluntary participation rate too low, the Agency made participation in the System mandatory, as of 1 January 1999. Under the Contract Payment Reporting System, individuals, partnerships, and corporations whose primary activity is construction must report their payments to subcontractors to the Agency on an annual basis. The Agency then matches this information against the data it maintains to identify taxpayers who have not filed tax returns or have under-reported their income. The information that the construction and home renovation sectors report allows the Agency to better target non-compliance.

3.51 However, the Agency was slow to address a compliance problem related to the electronic suppression of sales.

The Agency was slow to address the electronic suppression of sales

In the 1990s, the use of software to suppress sales, a practice known as electronic suppression of sales, was identified as a potential non-compliance issue. This suppression can occur in any industry or sector that regularly uses cash transactions, and where the taxpayer uses a point-of-sale system. The Agency was very slow to acknowledge that electronic suppression of sales, originally discovered in one province, could be more widespread in other parts of Canada, with a potential for millions of dollars in tax losses. The Agency's audit manual provides little guidance on effective means of detection or on technical support to deal with this type of compliance problem.

Since 2006, the Agency has made more efforts to deal with this issue. Through pilot projects, the Agency has identified 19 cases in two additional provinces in which it detected more than \$11 million of suppressed sales. IT specialists from other divisions were involved in assisting auditors from the Small and Medium Enterprises Directorate in determining the extent of suppression practices. However, at the time of our audit, the Agency was still unable to determine how serious electronic suppression of sales is across Canada.

3.52 In our view, the Agency has not significantly improved the targeting and selection of underground economy audit files because of its limited success in detecting unreported income in its audits, its mixed progress in addressing identified compliance problems, and the many designated low-risk files selected for audit from the small and medium enterprise population (Exhibit 3.7).

More industry sectors included in underground economy audits

3.53 Our 1999 Report recommended that the Agency reconsider its audit focus for the Underground Economy Initiative, to include taxpayers in all industry sectors with a high risk of unreported income. At that time, it was targeting four sectors.

Exhibit 3.7 Progress in addressing our recommendation on targeting and selection of audit files

April 1999 Report of the Auditor General of Canada, Chapter 2 Recommendation Progress The Agency should improve the targeting and selection of income tax files to increase the effectiveness of its Underground Economy Initiative audit activities in identifying unreported income. (adapted from paragraph 2.63)

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

- 3.54 The Agency agreed with our recommendation and has since revised its focus for the underground economy audits as part of its efforts to combat non-compliance. Since 2000, a minimum of 50 percent of underground economy audits are selected from the hospitality and construction sectors and the remaining percentage is selected from sectors each region chooses, based on local knowledge and experience.
- 3.55 While the Agency has revised its audit focus, it lacks a documented rationale to support that decision. Furthermore, it has not provided any formal guidance to the regions on how to select local underground economy sectors. Typically, any guidance came through underground economy conferences. As well, we found that the underground economy reports from the tax services offices we visited did not always provide sufficient rationale for the sectors selected. While some latitude is beneficial to enable the regions and tax services offices to use their local knowledge, more central guidance would help ensure that decisions made at the local and regional level are consistent with the Agency's direction and intent in combating the underground economy.
- **3.56** We also found that the Agency has completed the development of the sector profiles to provide auditors with background information for the four industry sectors targeted prior to 2000. As well, new profiles have since been developed for other sectors.
- **3.57** In our view, although more work is needed to support the decisions on which sectors to audit, the Agency has made satisfactory progress in implementing both of our recommendations on underground economy sectors (Exhibit 3.8).

Exhibit 3.8 Progress in addressing our recommendations on underground economy sectors

April 1999 Report of the Auditor General of Canada, Chapter 2	
Recommendation	Progress
The Agency should reconsider its audit focus for the Underground E and the last as payer in an solutors with a high risk of unreported income. (adapted from paragraph 2.50)	Satisfactory
The Agency should complete the development of its sector profiles in order to better audit underground economy issues. (adapted from paragraph 2.47)	Satisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory —Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Promoting compliance

Outreach activities continued, but the approach needs to be strategic

- 3.58 The Canada Revenue Agency (the Agency) has long recognized the importance of outreach activities as a component of its balanced approach to ensuring tax compliance. Our 1999 Report recommended that the Agency strengthen its Underground Economy Initiative activities to promote businesses' voluntary compliance. We reported that the number of outreach activities the Agency directed toward business had declined over the years. The Agency agreed with the recommendation and committed, before the Public Accounts Committee, to increasing the number of community visits and to maintaining relationships with private sector associations.
- 3.59 In this audit, we found that the Agency has conducted more community visits, trade shows, and public speaking engagements since 1999.
- 3.60 In June 2005, the Agency created the National Outreach Coordinating Committee to help strengthen and enhance outreach expertise across the Agency. Since 2006, the Agency has made the enhancement of the outreach program a major priority, according to the Corporate Business Plan. In the tax services offices we visited, auditors planned and conducted outreach activities with the support of communications experts. However, we found that their approach needed to be better targeted, by linking outreach activities with the potential risks that a national analysis had identified. The Agency also needs to measure the effectiveness and impact of these activities.

- 3.61 In March 2008, the Agency developed an underground economy planning document that outlined its procedures and expectations for outreach activities. The Agency is now strengthening its outreach program and allocates budgets to support outreach activities. However, the Agency recognizes that it lacks a national outreach strategy that would include plans for headquarters, the regions, and local offices. The National Outreach Coordinating Committee will develop the strategy, but the Agency has not determined timelines.
- **3.62** Although the Agency needs to make further improvements, we have assessed progress in implementing our recommendation on promoting voluntary compliance as satisfactory (Exhibit 3.9).

Exhibit 3.9 Progress in addressing our recommendation on promoting voluntary compliance

April 1999 Report of the Auditor General of Canada, Chapter 2	
Recommendation	Progress
The Agency should strengthen its Underground Economy Initiative activities to promote voluntary compliance by businesses. (adapted from paragraph 2.37)	Satisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

New national approach planned to promote compliance and taxpayer awareness

- **3.63** Our 1999 Report also recommended that the Agency complete research to determine how to implement social marketing activities to make taxpayers aware of the costs of the underground economy to society and legitimate business. The Agency agreed and committed to completing research about social marketing and public opinion.
- **3.64** In this audit, we found that the Agency has completed its research on the home renovation sector and identified several ideas for social marketing initiatives. One of those ideas was the "Get it in Writing!" campaign.
- **3.65** In 2005, the Agency also launched an initiative to provide periodic tax alerts to taxpayers. Some of these were published in languages other than English and French to reach more Canadian taxpayers.

"Get it in Writing!" campaign increases public awareness

In 2003, the Agency and the Canadian Home Builders Association (CHBA) officially launched a joint consumer awareness campaign, called Get it in Writing!, the goal of which was to increase awareness of the risks involved in dealing with underground contractors without a written contract. Although direct funding has not been provided by the Agency since 2005, the CHBA has continued to maintain its website for this campaign at http://www.hiringacontractor.com. "Get it in Writing!" is now a registered trademark of the Canadian Home Builders' Association.

- We also found that the Agency has conducted public opinion research studies tracking perceptions about tax cheating and examining how to implement its social messaging efforts. For example, in 2007, the Agency conducted a study of the potential impact of compliance communications on taxpayer perceptions about tax cheating. The study found that most people know little about the implications of tax cheating, and concluded that more communication would encourage better compliance.
- 3.67 Since 2006, the Agency has been working on a new national approach to promote compliance and taxpayer awareness. It has developed its first national compliance communication strategy. The Compliance Programs and Public Affairs branches presented their strategy paper to senior managers in March 2007, and brought forward their related implementation plan in January 2008. The new strategy includes use of communications as a compliance tool to influence both compliance perception and behaviour, as well as to change the way Canadians perceive the Agency and its tax administration, fairness, and effectiveness. The Agency recognizes that it still needs to develop indicators to measure the success of the strategy. In our view, progress in implementing our recommendation on improving taxpayer awareness of the costs of tax cheating is satisfactory (Exhibit 3.10).

Exhibit 3.10 Progress in addressing our recommendation on improving taxpayer awareness of the costs of the underground economy to society

April 1999 Report of the Auditor G	eneral of Canada, Chapter 2	
Recommen	dation	Progress
The Agency should can piete resear implement its social marketing activof the costs of the underground eco	vities to make taxpayers aware	Satisfactory

and the time that has elapsed since the recommendation was made.

Unsatisfactory — Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Measuring performance

The Agency tracks additional gross income but has not reported it

3.68 Our 1999 Report recommended that the Canada Revenue Agency (the Agency) record and report the additional gross income identified by its Underground Economy Initiative and non-Initiative enforcement activities and the additional taxes due on the unreported income. The Public Accounts Committee made a similar recommendation. The Agency agreed with the recommendations, and it committed to reporting the amounts for Initiative activities and to exploring options for recording the amounts identified by

that is found in all audits of small and medium enterprises. However, this amount is not being published in the Agency's Annual Report. In the 2006–07 fiscal year, the Agency noted in its Annual Report that its underground economy audit activities resulted in additional taxes of \$284 million. The amount reported includes taxes reassessed on the unreported income as well as other adjustments found during the underground economy audits. Furthermore, the amount does not include taxes reassessed on any of the unreported income identified in other audits conducted in the small and medium enterprise sector. It is therefore not a good indicator of the results of audit work that found unreported income. We assessed progress made on our recommendation on recording and reporting the additional gross income and taxes identified through the Agency's activities as unsatisfactory (Exhibit 3.11).

Exhibit 3.11 Progress in addressing our recommendation on recording and reporting additional gross income and taxes

April 1999 Report of the Auditor General of Canada, Chapter 2		
Recommendation	Progress	
The Agency should record and report the additional gross income identified by its Underground Economy Initiative and non-Initiative enforcement activities and the additional tax due on this unreported income (adapted from paragraph 2.62)	Unsatisfactory	

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

The Agency needs indicators and targets for the Small and Medium Enterprises Program

- 3.70 In the past decade, two events have significantly influenced the Agency in measuring and reporting performance. The first event was when Revenue Canada became an agency in 1999, a status that resulted in more flexibility, but also more accountability. The Agency is required to submit an annual report to Parliament that includes both financial and performance results.
- 3.71 The other event was the development of the Compliance Measurement Framework in 2004. As mentioned earlier in this chapter, adopting this framework was a positive step forward for the Agency because it has provided a greater focus for compliance research, and for developing compliance indicators and measurement methods.
- 3.72 The Agency uses many types of indicators to measure performance. Most of them measure outputs, such as the number of audits or the number of outreach activities completed. A few indicators measure outcomes, such as the fiscal impact of tax compliance activities. The fiscal impact is measured as the sum of the additional tax identified, including federal and provincial tax (except for Quebec taxes), interest and penalties, and the current value of future assessable federal tax.
- 3.73 The Agency also reported the rate of non-compliance for GST/HST registrants in the small and medium enterprise sector—9.1 percent in the 2006–07 fiscal year (for files that found additional federal taxes of more than \$5,000)—and used that rate to measure the trend of non-compliance over time. Since the rate was 12.3 percent in the 2004–05 fiscal year, the Agency concluded that the rate of non-compliance for the small and medium enterprise sector is relatively low and trending downward. However, we note that the rate of 12.3 percent was for the small and medium enterprise sector, whereas the rate of 9.1 percent was for the wholesale trade sub-sector. In our view, these rates cannot be compared for the purpose of identifying a trend.
- 3.74 The Agency also uses this non-compliance rate as an indicator to measure the effectiveness of its targeted audit selection by comparing the non-compliance rates of random and targeted audits. In the 2006–07 fiscal year, the Agency reported that targeted audits were four times more effective than random audits in identifying non-compliant taxpayers.
- 3.75 The Agency has made recent efforts to develop indicators and targets for the Small and Medium Enterprises Program. It established a Performance Measurement and Budget Working Group in 2007 with a

mandate to develop and implement a performance management framework and to simplify and streamline the budget allocation process. One of the working group's goals is to identify indicators and targets for measuring the efficiency and effectiveness of the Small and Medium Enterprises Program. At the time of our audit, the working group had begun a pilot project in the Pacific Region. In our view, this is a much-needed initiative, but as it has started only recently, it is too early to assess the results of the pilot project or the initiative.

- 3.76 Measuring the results of the Underground Economy Initiative. Our 1999 Report also recommended that the Agency develop indicators to measure and report the results of the full range of Underground Economy Initiative activities. The Agency agreed with the recommendation and said it was developing indicators to measure the performance of all enforcement activities, including the Underground Economy Initiative.
- 3.77 We found that few indicators exist to measure the results of the Agency's Underground Economy Initiative. Some of the indicators in the Compliance Measurement Framework give a sense of whether the underground economy is growing but do not measure the effectiveness of the Agency's compliance activities. We also found that the Agency has not developed a number of indicators it was considering in 1999 that would have provided information on the effectiveness of Initiative activities—for example, the proportion of taxpayers who continue to report their income properly in the years following an audit that found unreported income.
- 3.78 The Agency's annual reports provide little information on the results of the Underground Economy Initiative despite the Agency's commitment to do so. The information that is provided deals mainly with outputs such as the number of audits completed or the number of outreach activities done.
- 3.79 It remains a challenge for all tax administrators to identify robust measures of compliance and non-compliance concerning underground economy activities. The Agency has been studying the issues and staying involved in international consultations to keep abreast of any new developments. It is working with other tax administrations such as the Internal Revenue Service in the United States to identify indicators to measure its underground economy activities. However, in our view, actual progress made in this area since 1999 is unsatisfactory (Exhibit 3.12).

Exhibit 3.12 Progress in addressing our recommendation on measuring the results of the Underground Economy Initiative

April 1999 Report of the Auditor General of Canada, Chapter 2	
Recommendation	Progress
The Agency should develop indicators to measure and report the results of the full range of Underground Economy Initiative activities. (adapted from paragraph 2.70)	Unsatisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Conclusion

- 3.80 Overall, the Canada Revenue Agency (the Agency) has made unsatisfactory progress in addressing the recommendations we selected from our previous reports for follow-up. Progress on 7 of the 13 recommendations is satisfactory. However, of the 13 recommendations, we considered 6 to be the most important because they are critical to the success of the program or because the Agency made a commitment to Parliament. Progress was unsatisfactory on 4 of those 6 recommendations.
- 3.81 The Agency has conducted a major review to identify all of the threats to the tax base, as we recommended in 2004. One of the four biggest threats is the underground economy, and the Agency has developed an action plan to address it. As well, it has improved its monitoring of compliance by developing a Compliance Measurement Framework.
- 3.82 The Agency has systems and practices in place to assess and address the risks of non-compliance in the small and medium enterprise sector, but they need to be significantly improved. For example, the Agency completed two comprehensive validation studies of its computerized risk assessment systems that were underway at the time of our 2004 audit, but it has no plans to do regular validation studies. A recent study of how screeners in local offices select taxpayers for audit indicates that they need more confidence in the accuracy of the system's risk estimates. As well, the Core (random) Audit Program has not produced any reliable information providing new insights into risk factors and the underlying causes of non-compliance; this Program needs to be strengthened.

- 3.83 While the Agency's risk assessment systems identify potentially high-risk small and medium enterprises, and audits of those taxpayers generally result in higher reassessments, the Agency mostly audits other taxpayers. While the Agency provided a number of possible explanations for this situation, it has difficulty demonstrating that it is selecting and auditing small and medium enterprises of high risk or priority. As well, no unreported income was found in about 50 percent of the files selected for underground economy audits over the last five years.
- **3.84** The Agency has made some progress since 1999 in promoting taxpayer compliance and awareness of what the underground economy costs society. It has increased its outreach activities, but it still needs to develop a national outreach strategy. It has also recently developed a national compliance communication strategy.
- 3.85 The Agency uses many types of indicators to measure the performance of its Small and Medium Enterprises program, but most of them measure outputs rather than outcomes. Despite a commitment to do so, the Agency has not published the additional unreported income identified by its audits. While identifying robust indicators for measuring underground economy activities is a challenge, the Agency has made little progress in measuring the results of its Underground Economy Initiative since 1999.

About the Audit

Objective

The objective of this audit was to assess whether the Carada Revenue Agency (the Agency) has made satisfact of progress in implementant selected recommendations from Chapter 2 of the April 1999 Report of the Auditor Cicrottal - University and Four my Institutive, and Chapter 5 of the March 2004 Report of the Auditor General—Audits of Small and Medium Enterprises.

We assessed whether the Agency could demonstrate that it

- has systems and practices in place to assess and address the risks of non-compliance in the small and medium enterprise sector, including those participating in the underground economy;
- · selects and audits small and medium enterprises of high risk or priority;
- promotes taxpayer awareness of income reporting obligations through outreach and communications in the underground economy; and
- develops appropriate measures and reports on the effectiveness of its small and medium enterprise compliance program activities.

Scope and approach

This follow-up audit focused on the activities of the Compliance Programs Branch, particularly in the Small and Medium Enterprises Directorate (which includes the Underground Economy section); the Compliance Strategy Directorate, the Research, Risk and Business Management Directorate; and other directorates and divisions related to small and medium enterprises and underground economy compliance. This audit did not cover the activities of the non-filers/non-registrants program, the enforcement program for illegal activities, or the verification of individual income tax returns. The latter activity was covered in Chapter 3 of our November 2005 Report of the Auditor General—Verifying Income Tax Returns of Individuals and Trusts.

The Agency recently did an internal audit of the implementation of its underground economy action plans. We shared information with the internal auditors, but did not place any reliance on their work because it was still in progress at the time of our audit.

Our audit relied on several approaches. We conducted interviews; reviewed documents and reports, and in 17 in 17 in 18 i

Of the 21 recommendations (main and sub-sections included) reported in the previous two chapters, we selected 13 that dealt with the themes of this audit, assessing and addressing the risks of non-compliance, targeting respirate to another compliance, promoting compliance in the underground economy, and measuring and reporting on performance. We did not select the other eight recommendations, all related to Chapter 5 of the March 2004 Report of the Auditor General of Canada, because they perfain to other subjects, such as GST refunds and legislated penalties.

For purposes of determining the sample size for the Agency's Core Audit Program, we calculated the sample size in such a way as to give a margin of error (a confidence interval) of plus or minus 5 percent, a confidence level of 0.95, and a worst-case non-compliance rate of 50 percent. This calculation resulted in a sample size of 400 for the target populations discussed in paragraph 3.28.

Criteria

Listed below are the criteria that were used to conduct this audit and their sources.

Criteria	Sources
Assessing the risk	s of non-compliance
We expected the Agency to make satisfactory progress in implementing • recommendations 5.32, 5.44 (1st and 3rd bullets), and 5.55 from our March 2004 Report; and	Recommendations and entity responses to Chapter 5 of the March 2004 Report of the Auditor General, pp. 7, 11, and 14, and Chapter 2 of the April 1999 Report of the Auditor General, p.14.
recommendation 2.44 from our 1999 Report.	
We expected the Agency to undertake monitoring and research to identify compliance trends and problems, and to estimate the extent of non-compliance.	The Agency's description of its overall tax compliance risk management process, which can be found in its response to recommendation 5.32, p.7.
We expected the Agency to implement a strategy to ensure an effective check on non-compliance in the underground economy.	Canada Revenue Agency, Report on Plans and Priorities, 2004–2005, p.16; 2006–2007, pp. 45-46; 2007–2008, p. 30-31.
We expected the Agency to validate systems to ensure effective risk assessment of taxpayer files.	Responses to recommendations 5.44 and 5.55 from Chapter 5 of the March 2004 Report of the Auditor General, p. 11 and 14
Targeting taxpayers t	o audit for compliance
We expected the Agency to make satisfactory progress in implementing recommendations 2.47, 2.50, and 2.63 from our 1999 Report.	Recommendations and entity responses to Chapter 2 of the April 1999 Report of the Auditor General, p. 15 and 17.
We expected the Agency to identify high-risk and priority files for audit consideration.	Responses to recommendations 2.47 and 2.50 from Chapter 2 of the April 1999 Report of the Auditor General, p.15.
We expected the Agency to select taxpayers of high risk and priority for audit and then ensure that it audits those taxpayers.	Response to Recommendation 2.63 from Chapter 2 of the April 1999 Report of the Auditor General, p.17.
Promoting	compliance
We expected the Agency to make satisfactory progress in implementing recommendations 2.31 and 2.37 from our 1999 Report.	Recommendations and entity responses to Chapter 2 of the April 1999 Report of the Auditor General, p.11 and 13.
We expected the Agency to have a strategy to promote taxpayer awareness of income reporting obligations through outreach and communications in the underground economy and small and medium enterprises.	Response to Recommendation 2.37 from Chapter 2 of the April 1999 Report of the Auditor General, p.13. The Agency agreed with the recommendation and made a commitment to the Standing Committee on Public Accounts in its response to the 29th Report of the Committee.
We expected the Agency to develop appropriate measures on the effectiveness of its outreach and communications activities in the underground economy and small and medium enterprise sector.	Response to Recommendation 2.37 from Chapter 2 of the April 1999 Report of the Auditor General, p.13. The Agency agreed with the recommendation and made a commitment to the Standing Committee on Public Accounts in its response to the 29th Report of the Committee.

Criteria	Sources	
Measuring and reporting on performance		
We expected the Agency to make set that the process in implementing recommendations 2.62 and 2.70 from our 1999 Report.	Recommendations and entity responses to Chapter 2 of the April 1999 Report of the Auditor General, p.17 and 18.	
As a question the Agency to the activities of the second to the second t	The Agency agreed with the recommendations and made a commitment to the Standing Committee on Public Accounts in its response to the 29th Report of the Committee.	

Audit work completed

Audit work for this chapter was substantially completed on 29 August 2008.

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Status Report of the Auditor General of Canada to the House of Commons—2009

Main Table of Contents

Message from the Auditor General of Canada Main Points—Chapters 1 to 5 Appendix

Chapter 1 National Security: Intelligence and Information Sharing

Chapter 2 Governor in Council Appointments Process

Chapter 3 Auditing Small and Medium Enterprises—Canada Revenue Agency

Chapter 4 Treaty Land Entitlement Obligations—Indian and Northern Affairs Canada

Chapter 5 Passport Services—Passport Canada







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2009



Status Report
of the
Auditor General of Canada
to the House of Commons

Chapter 4

Treaty Land Entitlement Obligations— Indian and Northern Affairs Canada





2009



Status Report of the Auditor General of Canada to the House of Commons



Chapter 4

Treaty Land Entitlement Obligations— Indian and Northern Affairs Canada



The 2009 Status Report of the Auditor General of Canada comprises a Message from the Auditor General of Canada, Main Points—Chapters 1 to 5, an appendix, and five chapters. The main table of contents for the Report is found at the end of this publication.

The Report is available on our website at www.oag-bvg.gc.ca.

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Chapter

4

Treaty Land Entitlement Obligations
Indian and Northern Affairs Canada

All of the audit work in this chapter was conducted in accepy The Canadian Institute of Chartered Accountants. We for our audits, we also draw upon the standards and prac	ordance with the standards for assurance engagements set hile the Office adopts these standards as the minimum requirement tices of other disciplines.

Table of Contents

Main Points	1
Introduction	3
Treaty land entitlement obligations Land conversions involve several partners and processes What we found in 2005 Events since 2005 Focus of the audit	3 4 5 7
Observations and Recommendation	7
Conversion of lands to reserve status The Department has not reduced processing times The Department supports First Nations in their development of plans to convert lands A significant amount of land has been converted to reserve status	8 8 9
Management of the treaty land entitlement process Coordination of processes and data capture has improved Greater efforts are needed to improve management processes	12 13 14
Reporting of results Reporting on meeting treaty land entitlement obligations is inadequate Management attention	18 18
Sustained management attention is required	19
Conclusion	20
About the Audit Appendix List of recommendations	22





Treaty Land Entitlement Obligations Indian and Northern Affairs Canada

Main Points

What we examined

A treaty land entitlement claim arises when a First Nation asserts that the Government of Canada did not provide all of the reserve land promised under an historical treaty signed with the Crown. Once the federal government is satisfied that a First Nation has a valid claim, a settlement is negotiated and set out in a treaty land entitlement agreement.

Treaty land entitlement agreements provide First Nations with the right to select Crown land or with funds to buy private land, or both. These agreements are modern legal commitments that recognize the government's failure to comply with its treaty obligations. These obligations extend beyond land issues, but the agreements that we audited focus on land transfers. Indian and Northern Affairs Canada is responsible for managing the implementation of these agreements on behalf of the federal government, including the conversion of selected or purchased land to reserve status.

We examined the Department's progress in implementing recommendations from an audit we conducted in 2005, in which we reported a number of specific deficiencies in the Department's management practices for meeting treaty land entitlement obligations in Saskatchewan and Manitoba. The 2005 audit found that there had been limited progress in converting to reserve status the large number of acres selected in those provinces by First Nations.

Why it's important

First Nations of Saskatchewan and Manitoba are among the most impoverished in Canada. Acquiring land could serve as a means of improving their standard of living—for example, by providing an environment for developing First Nations-owned businesses. The Department has acknowledged that delays in converting land to reserve status under treaty land entitlement agreements affect First Nations' use of these lands and can have an impact on their social and economic development opportunities.

First Nations have a strong traditional attachment to land and view it as vital to their cultural preservation and economic development. It is important to both Canada and First Nations that the government meet the obligations set out in treaty land entitlement agreements within a reasonable time. Canada has century-old commitments to provide land for First Nations under treaties, which are constitutionally protected.

What we found

- Overall, Indian and Northern Affairs Canada has made satisfactory progress since 2005 in converting land selected by First Nations to reserve status. More than 315,000 acres have been converted to reserves in Manitoba and Saskatchewan, an increase of 42 percent since our previous audit. In both regions, the Department has also made satisfactory progress in working more closely with First Nations on plans to convert their outstanding selections of land, in its efforts to coordinate environmental assessments and land surveys of selected land, and in improving its capture and processing of data.
- The Department has not made satisfactory progress toward implementing several of our recommendations for improving its management practices to meet its obligations. For example, it still does not track the overall time it takes to process land selections and it cannot demonstrate that processing times have improved over the last three years. It has rarely supported the First Nations in Manitoba in their efforts to resolve third-party interests, as it did for Saskatchewan First Nations. And it has not established plans for converting to reserve status more than 250 selections of land in Manitoba that are not part of a four-year ministerial commitment.
- Without sustained attention to correct the weaknesses we have identified in our audit, the Department risks being unable to sustain its progress in converting land to reserve status.

The Department has responded. The Department agrees with our recommendation. Its detailed response follows the recommendation in the Chapter.

Introduction

Treaty land entitlement obligations

- 4.1 Following Confederation in 1867, Canada signed 11 treaties with First Nations in Central and Western Canada, intended, in part, to deal with the waves of settlers moving across the Prairies. Under these treaties, Canada promised to reserve alternative lands for First Nations (that is, create reserves). In exchange, the First Nations agreed to surrender the land that Canada planned to develop. However, fulfilling treaty obligations extends beyond promising land. Treaties are solemn agreements between the Crown and First Nations. Treaty rights are recognized and affirmed under the Constitution Act and, as such, are constitutionally protected.
- was to be set aside for reserves, they did not specify when it was to be set aside. When the treaties were signed, it was understood that First Nations and Canada would agree on what land would be set aside and that government agents would return within a year or two to count the band population and survey the land for reserves. However, band populations were in flux in the late 1800s. Disease and the collapse of traditional food sources meant more people were on the move as they sought food. Consequently, surveyors sometimes did not include all band members in initial calculations or missed entire bands. As a result, certain First Nations did not receive the land promised under the treaties.
- **4.3** Canada has acknowledged its failure to meet these treaty obligations for land. It has also demonstrated its desire to fulfil these obligations by signing treaty land entitlement agreements, which are also constitutionally protected documents, with these First Nations. Most of the treaty land entitlement agreements relate to First Nations in Manitoba and Saskatchewan.
- 4.4 Under the agreements, a quantity of land is determined through a negotiation process, and the First Nation may obtain federal or provincial (territorial) land or purchase private land. This land can then be converted to reserve status, according to the terms of settlement agreements and the federal Additions to Reserve/New Reserve Policy.
- **4.5** In 1992, the Saskatchewan Treaty Land Entitlement Framework Agreement was signed by 25 First Nations, by Canada, and by Saskatchewan. Canada entered into this Agreement to fulfill earlier

commitments made in treaties signed by Canada and First Nations in Saskatchewan between 1871 and 1906. Along with eight separate but similar treaty land entitlement agreements signed with individual First Nations since 1992, these agreements provide about \$415 million in federal compensation to 33 First Nations, enabling those First Nations to acquire up to 2.7 million acres of land.

- 4.6 In 1997, the Manitoba Treaty Land Entitlement Framework Agreement was signed by the Treaty Land Entitlement Committee of Manitoba Inc. (representing 19 First Nations), by Canada, and by Manitoba. Canada entered into this Agreement to fulfill long-standing commitments made in treaties signed by Canada and First Nations in Manitoba between 1871 and 1910. Eight additional First Nations in Manitoba have signed separate treaty land entitlement agreements.
- 4.7 Under these treaty land entitlement agreements, Canada and Manitoba committed to establishing up to 1.4 million additional acres of reserve lands to make up for the shortfall that occurred when reserves were created. Manitoba provides the First Nations with 1.1 million acres of Crown land, and Canada provides \$190 million in federal compensation. First Nations that do not have enough Crown land available to select in their immediate vicinity can use some of this money to purchase up to 300,000 acres of land from private owners.

entitlement agreements, the minimal acreage that must be purchased and or selected and set apart as reserve land

Shortfall—The amount of land a First Nation should have received when its reserve was first

Land conversions involve several partners and processes

- 4.8 Treaty land entitlement agreements set out the necessary responsibilities for Indian and Northern Affairs Canada, the provinces, and First Nations to complete the process of converting land selections to reserve status. According to these agreements, First Nations are responsible for, among other things, making land selections and satisfying third-party interests. The provinces' responsibilities include informing First Nations of third-party interests and passing orders-incouncil to transfer provincial lands to Canada. In Manitoba, the province is also involved in approving surveys and assisting First Nations in concluding service agreements with local councils.
- **4.9** We did not audit First Nations or provincial governments. All of our audit observations relate to the Department's progress in implementing the recommendations in our 2005 audit.
- **4.10** The Department's key responsibilities are to
 - carry out legal title searches for selected lands;
 - prepare agreements under the *Indian Act* to replace third-party interests in the selected land;

- conduct environmental site assessments:
- survey selected lands;
- seek approvals through ministerial orders or orders-in-council, which would transfer the selected land to the First Nation.

These agreements also require the Department to ensure that it has the necessary staff to meet its obligations.

- **4.11** The Department is supported in fulfilling some of these responsibilities by other federal departments, including the Department of Justice Canada and Natural Resources Canada. However, those departments were not included in the scope of our audit.
- **4.12** There are three phases to the treaty land entitlement process:
 - Phase I includes land selection and (if necessary) purchase of land, which is the responsibility of First Nations. This phase ends with a formal Band Council Resolution that transmits the First Nation's proposal on the land selected to the Department and requests that the selected land be added to their reserve.
 - Phase II includes, among other things, the completion of the required land surveys and environmental assessments. The Department's regional offices are very active during this phase.
 - Phase III is primarily the responsibility of the Department's head office. It includes seeking approvals through ministerial orders or orders-in-council to convert land to reserve status.
- **4.13** Exhibit 4.1 illustrates the complexities of each phase of the treaty land entitlement conversion process.

What we found in 2005

- **4.14** In 2005, we audited the Department's management of its responsibilities under treaty land entitlement agreements. We found a number of deficiencies that affected the Department's fulfillment of its obligations, including the following:
 - Inadequate planning and an absence of targets for land conversions limited the Department's progress in converting to reserve status the large number of acres selected by First Nations.
 - The Department had converted 12 percent of the acres selected by First Nations in Manitoba and 58 percent of those selected in Saskatchewan. It had no plan in place to process remaining selections and to fulfill commitments under the treaty land entitlement agreements.

Phase I Band Council Resolution and Additions to Reserve Main responsibility: Entitlement First Nation purchases lands. **First Nations** which are held in fee simple sent to Indian and Northern Affairs Canada Department forwards Band Council Resolution to Entitlement First Nation submits Band Council the province for its concerns and any Resolution and Additions to Reserve proposal to the Department requesting reserve statusincludes legal description of land acquisition Phase II Main responsibility: The Department's regional office Department informs the province of acquisition Department conducts the land title search If services are Saskatchewan required, a Entitlement First Nation advises municipality of its municipal acquisition and whether services are required the municipality of its selection service provision (for example, water and sewage) agreement is title search negotiated Environmental review is conducted Environmental review is conducted Addition to Reserve Committee submission Addition to Reserve Committee submission is provided to is provided to the Regional Director General the Regional Director General for approval in principle 1n for approval in principle In Manitoba, a Saskatchewan survey for the Survey is conducted for legal description legal description is conducted of land is conducted if necessary Entitlement First Nation transfers title of land to Canada Department forwards survey to the province The province transfers residual Crown Provincial order-in-council transfers land to Canada Canada accepts administration and control under the Federal Real Property and Federal Immovables Act Phase III Main responsibility: Indian and Northern Affairs Canada prepares Governor-In-Council submission or Ministeral Order for reserve establishment The Department's head office Canada signs Governor-In-Council submission, and then a Privy Council Order establishes reserve status. The Order establishing land as reserve is registered in the Land Titles Office and Indian Lands Registry

Exhibit 4.1 Overview of process for converting selected land to reserve status

Sources: Manitoba Treaty Land Entitlement Framework Agreement, Saskatchewan Treaty Land Entitlement Framework Agreement, and Indian and Northern Affairs Canada

- Inadequate management of the conversion process by the Department. For example, a lack of coordination in land surveys and expired environmental assessments resulted in delays in the conversion of land to reserve status.
- Communication between the Department and First Nations was limited and sometimes inconsistent, which caused frustration for First Nations and had a negative impact on the conversion process.

Events since 2005

- 4.15 After our 2005 audit, the Minister of Indian and Northern Affairs, at the 18th Annual General Assembly of the Assembly of Manitoba Chiefs in August 2006, committed the federal government to converting 150,000 acres of land in Manitoba to reserve status for each of the following four years. At the time, the Department reported that less than 130,000 acres had been converted to reserve status in Manitoba since the initial treaty land entitlement agreement was signed in 1997.
- **4.16** Additional treaty land entitlement agreements have also been signed since the 2005 audit: Four new agreements in Saskatchewan and one in Manitoba.

Focus of the audit

- **4.17** We examined whether the Department was able to demonstrate that it had made satisfactory progress in implementing the recommendations we made in our November 2005 Report, Chapter 7, Indian and Northern Affairs Canada—Meeting Treaty Land Entitlement Obligations.
- **4.18** While we did not audit First Nations or other organizations involved in the process, we did interview their officials to help us determine how the Department is managing its responsibilities.
- **4.19** More details on the audit objective, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations and Recommendation

- 4.20 The 2005 audit made eight recommendations to Indian and Northern Affairs Canada related to converting lands to reserve status, managing the treaty land entitlement process, and reporting results. The Department accepted our recommendations and committed to making ongoing improvements to meet its treaty land entitlement agreement obligations. It also committed to working with First Nations as well as other partners to address the issues we raised in our audit.
- 4.21 Throughout this audit, the Department provided us with information on costs, on the acres that First Nations are entitled to, and on the lands they have selected. We found numerous examples of data being received from the Manitoba region that was inaccurate or incomplete. In each of these cases, we took all reasonable measures to obtain the most accurate information available. The data in this audit represent the Department's and our best estimates, based on the information that was available.

Conversion of lands to reserve status

The Department has not reduced processing times

- 4.22 In our 2005 audit, we noted that the Minister of Indian and Northern Affairs, recognizing that processing times of five to seven years to convert land to reserve status were too long, had made a commitment in 2001 to reduce them to two years. In that audit, we recommended that the Department develop and implement a plan that sets out the explicit steps it would take to process outstanding selections and reduce processing times to two years.
- 4.23 In this follow-up audit, we assessed the Department's planning processes and sought to determine progress made to reduce processing times. We found that the Department has developed plans that focus on the processing of outstanding land selections for entitlement First Nations. In Manitoba, the Department has developed an operational tool to capture next steps and outstanding issues for land selections that it is converting to reserve status in order to meet the commitment it made in 2006.
- 4.24 In Saskatchewan, the Department has an operational tool that tracks the status of all land selections for each Entitlement First Nation. The level of detail captured in this tool varies by land selection. However, it generally outlines requirements for land conversion and action items or issues to be addressed. For some land selections, it also provides details on who is responsible for completing specific actions and on what the next steps are in the process.

- **4.25** While the Department has improved its planning for processing outstanding selections, we found that it has not developed or implemented a plan to reduce processing times, as we recommended in 2005. For land selections in Saskatchewan, the necessary information is captured, but is not analyzed. For those in Manitoba, we found that the Department does not even capture the information necessary to determine whether processing times are being reduced.
- **4.26** We reviewed each of the 32 land selections converted in Manitoba during the first year of the 2006 commitment, to identify processing times for each of these selections. We found that the average processing time for phases II and III of these selections was close to seven years, with some of these selections taking over a decade. The Department was not able to demonstrate a reduction in processing times.
- **4.27** Lengthy processing times have the potential to negatively affect First Nations' plans for economic development on land selections, as this development may not be possible until the land is converted to reserve status. The Brokenhead Ojibway Nation in Manitoba is an example of a First Nation that is at risk of having to delay projects while waiting for land to be converted to reserve status (Exhibit 4.2).

Exhibit 4.2 Delays in converting land inhibits economic initiatives

Brokenhead Ojibway Nation, Manitoba

The Manitoba Treaty Land Entitlement Framework Agreement recognized the entitlement of the Brokenhead Ojibway Nation (a First Nation community located north of Winnipeg) to a total amount of 14,481 acres. The First Nation has informed us that it has a variety of plans for economic development activities that it intends to pursue once the selected lands have been converted to reserve status. For example, it plans to develop commercial office space on a land selection located along a provincial highway. This land selection has been in the conversion process for over five years.

The Department supports First Nations in their development of plans to convert lands

- **4.28** In our 2005 audit, we found that the Department did not always clearly communicate with First Nations about
 - what the process was for converting their treaty land entitlement selections to reserves,
 - where their land selections were in the process,
 - what the next steps were, and
 - when the process was expected to be completed.

- 4.29 We also found that communication with First Nations was neither coordinated nor sustained. We recommended that the Department work more closely with First Nations to develop an action plan for land selections that would, among other things, set out a strategy for converting these lands to reserves.
- 4.30 In this follow-up audit, we expected that the Department would have worked with First Nations to develop action plans for their land selections. We found that the Department has improved its communications with First Nations and is making efforts to work more closely with them on their plans to convert outstanding land selections.
- 4.31 In the Department's Saskatchewan region, officials regularly share information with First Nations on the status of their land selections. They also meet with them periodically to discuss challenges and next steps in the conversion process. The Department has also demonstrated that it has made efforts to meet with many First Nations in Manitoba to discuss the status of their land selections.

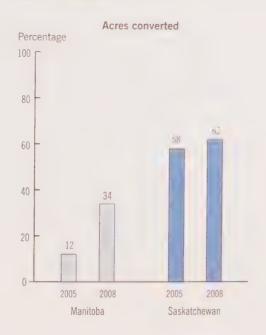
A significant amount of land has been converted to reserve status

- 4.32 In our 2005 audit, we found that only about 12 percent of selected lands in Manitoba had been converted to reserve status, and about 58 percent of selected lands had been converted in Saskatchewan. We made several recommendations aimed at improving the Department's processes for converting lands to reserves. In this follow-up audit, we note that the Department has processed over 200 land selections in the two provinces since 2005, designating over 315,000 acres as additional reserve land. This represents a 42 percent increase in land conversions in just three years. In Manitoba alone, over 227,000 acres have been converted to reserve status since our 2005 audit—more than double the total acres converted in the previous eight years.
- 4.33 The increase in land conversions in Manitoba can be attributed to the commitment made, in August 2006, by the former Minister of Indian Affairs and Northern Development, to convert 150,000 acres of land in that province to reserve status every year for four years. In the first year of this commitment, over 159,000 acres were converted—more land than had been converted between 1997 and our 2005 audit. In the second year, however, the Department converted only 43,000 acres in Manitoba, less than one third of its commitment for that year. Nonetheless, by the end of the second year, the percentage of acres selected by First Nations that had been converted to reserve

status in Manitoba had increased to 34 percent, up from 12 percent in 2005 (Exhibit 4.3). Since the 2006 commitment, of the 20 First Nations that have ratified their agreements and made land selections, 14 had at least one land selection converted and some had multiple selections converted.

- 4.34 The size of the land selections in Manitoba contributed to the Department's success in converting a large number of acres. Since 2005, 68 land selections were converted, with an average size of approximately 3,300 acres—one of these selections was more than 58,000 acres. In contrast, the average size of land selections that still need to be converted in Manitoba is less than 1,500 acres.
- 4.35 In order to convert 150,000 acres per year (as required under the 2006 commitment), the Department will need to process a much higher number of selections. At the end of our audit, over 430 selections—close to 650,000 acres of reserve land—remained to be converted in Manitoba.
- **4.36** We noted in this follow-up audit that, in Saskatchewan, about 62 percent of the selected acres have been converted, up from 58 percent in 2005. Since 2005, the Department has converted over 89,000 acres in Saskatchewan to reserves. Of the original 25 First Nations that were part of the initial treaty land entitlement agreement,

Exhibit 4.3 Between 2005 and 2008, the percentage of acres converted to reserves has increased, especially in Manitoba



- 22 have obtained their minimum required reserve acres. Three additional First Nations, covered under agreements that were signed more recently, have also reached their minimum required reserve acres. The Department has identified over 700 land selections that still need to be converted, representing 451,000 acres of reserve land. In contrast to those in Manitoba, the average size of outstanding land selections in Saskatchewan remains about the same as those that have been converted to date, about 600 acres.
- volumes of land in Manitoba has had an adverse impact on the time required to convert land in Saskatchewan. Phase III of the land conversion process requires that the Department's head office staff process the file and obtain either a ministerial order or an order-incouncil. Since the 2006 commitment made processing Manitoba land conversion files the priority at the Department's head office, the average Phase III processing times for land selections from Saskatchewan has almost tripled—from 76 to 210 days. According to information provided by the Department, it now takes almost twice as long to complete the Phase III process for selections in Saskatchewan as it does for selections in Manitoba. Delays in converting lands in Saskatchewan sometimes have direct financial implications, both for First Nations in Saskatchewan and for the Department.
- 4.38 Exhibit 4.4 summarizes our assessment of the Department's progress in implementing our 2005 recommendations on converting lands to reserves.

Management of the treaty land entitlement process

- 4.39 During our 2005 audit, we reported on several long-standing weaknesses in the Department's management processes for meeting treaty land entitlement obligations, particularly those related to
 - environmental reviews,
 - · land surveys, and
 - the resolution of third-party interests.
- 4.40 In our 2005 audit, we made five recommendations to address the need for improved management processes. During this follow-up audit, we expected that the Department would have acted on our recommendations and would now have appropriate systems and processes in place to manage its treaty land entitlement obligations.

Exhibit 4.4 Progress in addressing our recommendations on converting lands to reserves

November 2005 Report of the Auditor General, Chapter 7	
Recommendation	Progress
Indian and Northern Affairs Canada should develop and implement a plan setting out explicit steps it will take to process outstanding selections and to meet commitments to reduce the processing time for treaty land entitlement selections from initial Band Council Resolution to conversion to reserve status (paragraph 7.20).	Unsatisfactory
Indian and Northern Affairs Canada should work more closely with each First Nation to develop an action plan for its selections. This should include	
ensuring that the First Nation understands the conversion process,	
setting out timelines or schedules for key milestones in the process,	Satisfactory
setting out a strategy for converting each of the selections to reserve status, and	
 providing ongoing assistance to First Nations as they work to meet their responsibilities under these agreements (paragraph 7.27). 	

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Coordination of processes and data capture has improved

- 4.41 Environmental reviews and land surveys. In 2005, we recommended that the Department take measures that would lead to better coordination of environmental reviews and land surveys. In this follow-up audit, we found that the Department has changed its requirements for updating environmental assessments, which is consistent with the intent of our 2005 recommendation. The period for which environmental reviews remain valid has increased from two years to five years. This helps the Department coordinate having simultaneously valid environmental reviews and land surveys.
- 4.42 Data capture. In 2005, we also recommended that the Department improve its data capture and sharing capabilities for land selection files. The Department committed to having an operational system in place to achieve this by April 2009. At the time of our follow-up audit, the Department had almost completed the development of a new national database designed to improve data collection, file tracking, and information sharing. Field testing of the

database was scheduled for fall 2008 and winter 2009. Officials informed us that the database will address many elements of our 2005 recommendation. We noted, however, that there were significant weaknesses in the integrity of some of the data to be included in the new database and that the Department has yet to identify how these weaknesses will be addressed. The success of the database depends on this critical issue (Exhibit 4.5).

Greater efforts are needed to improve management processes

4.43 Third-party interests. The Treaty Land Entitlement Framework agreements in Manitoba and Saskatchewan do not obligate the Department to resolve third-party interests. Nevertheless, in 2005, we

Exhibit 4.5 Progress in addressing recommendations on improving the coordination of processes and data capture

November 2005 Report of the Auditor General, Chapter 7			
Recommendation	Progress		
While respecting legislation and statutes, Indian and Northern Affairs Canada should			
 issue revised guidance that sets out criteria for departmental officials to follow when carrying out environmental reviews, with specific time frames and that allows for discretion on the part of personnel to determine whether updates are necessary; 	Satisfactory		
 plan land surveys so that they are undertaken to allow selected land to be converted to reserve status in a timely manner; and 			
 develop a coordinated strategic plan so that the required environmental reviews and land surveys do not hold up conversion of land to reserve status (paragraph 7.36). 			
Indian and Northern Affairs Canada should			
take steps to ensure that treaty land entitlement data are complete and accurate;			
 develop and implement a file-tracking system that can provide accurate information on results achieved (for example, number of acres selected, number of acres converted). The file-tracking system should be designed to flag barriers and risks to individual files so that remedies may be introduced and files can be completed in a timely and efficient fashion; and 	Satisfactory		
 regularly provide information needed to process selections to those involved in the process, including entitlement First Nations and provincial governments (paragraph 7.65). 			

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

recommended that the Department work with First Nations to assist them in their efforts to resolve these interests. The Department agreed with our recommendation and made a commitment to take action. In this follow-up audit, we found that, while the Department has participated in a number of initiatives to discuss third-party issues, it was only able to give a few examples of its direct role in supporting First Nations in Manitoba. In fact, throughout the audit, Department officials repeatedly referred to the fact that the Manitoba Framework Agreement does not obligate them to resolve third-party interests.

- **4.44** In contrast, the Department actively supported First Nations in Saskatchewan in resolving third-party interests. For example, we found, in one of the files we examined, the Department had devoted extra resources to help resolve third-party interests for a land selection that was a priority for a First Nation.
- **4.45** We also found that the Department has increased its efforts to better inform First Nations, the provinces, and other stakeholders, through joint education and information sessions about third-party interests in both regions. However, the Department was unable to demonstrate that it had developed additional tools to help resolve third-party interests, as it had committed to do in 2005.
- 4.46 Land selection files. In 2005, we also recommended that the Department develop and implement a consistent approach to ensuring that its land selection files are properly organized and that they contain the documentation required to facilitate conversion. We found that most of the land selection files that we reviewed in the Department's Manitoba office were not well organized and often were not comprehensive. Conversely, the majority of files that we reviewed from the Saskatchewan office were well organized and comprehensive. However, we found that neither office had a protocol for file management.
- 4.47 Management plans. In 2005, we recommended that the Department develop a management plan that outlines how it will manage its operations for processing outstanding selections within a reasonable period of time. During this follow-up audit, we found that it had not done so for the Manitoba region. Instead, the Department's strategic planning for Manitoba is focused on meeting its 2006 commitment to convert 150,000 acres annually for four years; it does not include plans to prioritize and process the more than 250 selections that are not part of this 2006 commitment.

- 4.48 The Department's planning for Saskatchewan is consistent with its obligations under the agreement, in that planning is focused on the First Nations that have yet to reach their minimum required reserve acres. We found that the Department also processes land selections for First Nations that have already met their minimum required reserve acres. As a result, the Department has successfully converted over 1,200 selections in Saskatchewan, 145 since our 2005 audit. In addition, the Department uses management tools in Saskatchewan that track the status of all land selections to help keep officials up to date on the outstanding treaty land entitlement workload.
- 4.49 Continuing management weaknesses we identified in this follow-up audit are of particular concern, as they relate to treaty obligations that Canada incurred more than a century ago and that it reiterated its commitment to fulfilling over the past two decades. The Rolling River community, in Manitoba, and the Onion Lake community, in Saskatchewan, are examples of First Nations communities where land being converted to reserve status has helped improve economic prosperity and social well being, even though more remains to be done (Exhibit 4.6).

Exhibit 4.6 Converting land to reserve status benefits First Nation communities

Rolling River, Manitoba

The Manitoba Treaty Land Entitlement Framework Agreement recognized the entitlement of Rolling River (a First Nation community in southern Manitoba) to a total amount of 47,112 acres. To date, 2,509 acres of the 8,894 selected by Rolling River have been converted to reserve status.

The Rolling River First Nation community informed us that it has used lands that were converted to reserve status under its Treaty Land Entitlement Agreement for developments that it believes are both economically and socially beneficial to the community. Of the land converted to reserve status in 2006, 156 acres now house a community-staffed health centre and gas bar, which is located on a busy provincial highway in the vicinity of a national park.

The community also informed us that it had purchased land on which it plans to build log cabins to be used as summer rental properties. However, the land must be converted to reserve status before it is economically feasible to do so. The First Nation also plans to make other land selections available to the community, so other options, such as housing, can be pursued.

Onion Lake, Saskatchewan

The Saskatchewan Treaty Land Entitlement Framework Agreement recognized Onion Lake's entitlement to a total of 108,551 acres. To date, of the 102,825 acres that have been selected by Onion Lake, 90,350 acres have been converted to reserves.

The First Nation informed us that one of its selections was for a small parcel of land between the existing reserve and the Saskatchewan River. The First Nation used that land to drill a well, which now provides clean drinking water to the community. This well serves as an important source of clean drinking water and has helped the community deal with a long-standing potable water problem.

4.50 In summary, we found that the Department has made satisfactory progress in addressing two of the management-related recommendations, while progress made on the remaining three recommendations was unsatisfactory (Exhibit 4.7).

Exhibit 4.7 Progress in addressing recommendations on improving management processes

	1		
Recommendation	Progress		
Indian and Northern Affairs should work with First Nations to assist them in their efforts to resolve third-party interests. This should include	Unsatisfactory		
 building on initial efforts, and identifying and educating stakeholders that typically have third-party interests and educating them on what treaty land entitlement involves and how it affects them; 			
 identifying systemic barriers to resolving recurring third-party interests and providing information to First Nations on possible strategies and actions to address them; and 			
 encouraging the use of dispute resolution mechanisms set up under treaty land entitlement agreements to help resolve third- party interests (paragraph 7.46). 			
Indian and Northern Affairs Canada should develop and implement a consistent approach to ensure that its land selection files are properly organized and contain documentation required to facilitate conversion (paragraph 7.59).	Unsatisfactory		
Indian and Northern Affairs Canada should develop a strategic management plan outlining how it will manage its operations to process selections within a reasonable period of time. This strategic plan should			
 include a projection of the ongoing workload (in terms of selections in process and selections expected in the future); 	Unsatisfactory		
• set out how the Department will process remaining selections, which are often complex;	Onsatisfactory		
set out resources required (people and financial resources); and			
• track the information needed to better plan and report the results of its work (paragraph 7.60).			

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Reporting of results

Reporting on meeting treaty land entitlement obligations is inadequate

- 4.51 In 2005, we found limited information on Indian and Northern Affairs Canada's objectives, performance expectations, timelines, and its reporting of results. We recommended that the Department periodically report results related to treaty land entitlement agreements, including the progress it made in meeting its legal obligations, the costs that were incurred, and the number of acres that were selected and converted. We also recommended that the Department provide updates on its efforts to reduce the time taken to convert selected land to reserve status.
- 4.52 We expected the Department would have reported this information in its 2005–06 Departmental Performance Report and would have provided updates every three years thereafter, as it committed to do in its response to our recommendation.
- 4.53 We found that information related to its treaty land entitlement obligations in the 2005–06 Departmental Performance Report was minimal. It focused instead on the Addition to Reserve process, which includes treaty land entitlements and other provisions for converting land to reserve status. This report includes only general information on the Department's efforts to reduce processing times and on its efforts to improve the process overall. We also examined the 2006–07 Departmental Performance Report and found that the only information about treaty land entitlements was a reference to the 2006 commitment in Manitoba.
- 4.54 There is no information in these departmental performance reports about the relationship between lands selected and lands converted under treaty land entitlement agreements or about the cost of meeting treaty land entitlement obligations. As a result, the Department is not clearly presenting the progress it has achieved and the challenges that remain for Canada to meet its treaty land entitlement obligations in Saskatchewan and Manitoba.
- 4.55 We found that the Department's reporting on its treaty land entitlement obligations was inadequate (Exhibit 4.8).

Exhibit 4.8 Progress in addressing our recommendation on performance reporting

November 2005 Report of the Auditor General, Chapter 7	
Recommendation	Progress
Indian and Northern Affairs should periodically include in its performance report to Parliament	
 results information on meeting its legal obligations for treaty land entitlement, including costs, numbers of acres selected, and acres converted to reserve status; and 	Unsatisfactory
• an update off its efforts to reduce the time taken to convert selected land to reserve status (paragraph 7.68).	

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Management attention

Sustained management attention is required

- 4.56 While recognizing the substantial progress that has been made in converting land to reserves over the past three years, we also note that the Department has not sufficiently addressed several underlying weaknesses in its processes for meeting treaty land entitlement obligations. Although treaty land entitlement agreements are constitutionally protected, the Department has not implemented several of our 2005 recommendations aimed at improving their implementation.
- **4.57** Sustained management attention to implement the recommendations we made in 2005 could help the Department to continue to process outstanding land selections, reduce the time required to do so, and meet Canada's treaty land entitlement obligations.
- **4.58** Recommendation. Indian and Northern Affairs Canada should develop and implement an action plan that sets out how it plans to convert lands to reserve status. In the plan, the Department should clearly identify its next steps, responsibilities, and timelines for actions for each land selection that is to be converted to reserve status. The action plan should include details on
 - the Department's commitment to help First Nations resolve thirdparty interests,
 - the way data integrity issues will be resolved, and

• the Department's plan for developing a consistent file structure to better monitor the status of treaty land entitlement selections.

The Department's response. Canada is committed to honouring its lawful obligations to First Nations through the resolution of treaty land entitlements. Since the 2005 audit, Indian and Northern Affairs Canada has made great strides in the conversion of land to reserve status, with more than 315,000 acres being converted in Manitoba and Saskatchewan, representing a 42 percent increase in three years. Additionally, Indian and Northern Affairs Canada has improved the coordination of environmental assessments and land surveys of selected land and has worked closely with First Nations to develop future plans to convert outstanding selections.

Indian and Northern Affairs Canada agrees with the recommendation and commits to an action plan that sets out next steps, responsibilities, and timelines for the process by which land selected is to be converted to reserve status. The action plan will include details on how the Department intends to help First Nations resolve third-party interests and how data integrity issues will be resolved as well as on the development of a consistent file process to monitor the status of treaty land entitlement selections.

Conclusion

- 4.59 Overall, Indian and Northern Affairs Canada has made satisfactory progress in converting land to reserve status. Since our 2005 audit, the Department has converted over 315,000 acres in Manitoba and Saskatchewan—a 42 percent increase in three years.
- 4.60 We found that the Department has made satisfactory progress in implementing some of our 2005 recommendations. These relate to working more closely with First Nations on plans to convert their outstanding selections, enabling better coordination of its environmental assessments and land surveys, and making efforts to improve its data capture and processing capabilities.
- 4.61 However, we are not satisfied with progress made by the Department to implement several of our recommendations, including the following:
 - The Department does not track the overall time it takes to convert lands to reserve status and cannot demonstrate improvements in processing times over the last three years.

- The Department has not made satisfactory progress in working with First Nations in Manitoba to assist them in their efforts to resolve third-party interests; in Saskatchewan, the Department did support First Nations in these efforts.
- While the Department did prioritize lands to be converted to reserve status, it has not established plans for converting to reserves more than 250 land selections in Manitoba that are not part of a four-year ministerial commitment.
- The Department has not adequately reported results it achieved in relation to the overall objective of land conversions.
- **4.62** Meeting Canada's obligations to provide lands to First Nations will require significant and ongoing effort. We believe that the Department will need to address management weaknesses we identified to further build on its success of the last three years and meet its treaty land entitlement obligations.

About the Audit

Objective

The objective of the audit was to determine if Indian and Northern Affairs Canada was able to demonstrate that it had in descript progress in implementing the recommendations made in our November 2005 Report, Chapter 7, Meeting Treaty Land Entitlement Obligations.

Scope and approach

We examined how the Department had implemented the recommendations made in the 2005 audit chapter. Consistent with the approach used in 2005, the audit tocused on the Manitoba and Saskatchewan tegrons as, according to the Department, approximately 90 percent of treaty land entitlement transactions take place in these two regions. We examined work completed at he adquarters and in the regional offices in Saskatchewan and Manitoba.

We conducted interviews with officials at headquarters and at regional offices in Saskatchewan and Manitoba to better understand the treaty land entitlement processes and related operations.

We also reviewed relevant documentation—including legislation, corporate and regional documents, planning documents, and other reports as well as unformation from stakeholders—to better understand the Additions to Reserve Policy and the roles, responsibilities, and practices of the parties.

We reviewed seven files each in Saskatchewan and Manitoba to determine whether the Department's implementation plan markets are nicely applied to those files. These included files that were active at the time of our audit in 2005, where land selections had since been converted to reserve status, and files that were active during our follow-up audit.

We also met with representatives from four First Nations in Saskatchewan and Manitoba and met with regional First Nation organizations to obtain their perspectives.

We did not audit treaty land entitlement trust agreements, which are used to manage funds received as part of the agreements, and we did not audit First Nations or any other organizations involved in the process.

Criteria

Listed below are the criteria that were used to conduct this audit and their sources.

Criteria	Sources ·
Departmental response to November 2005 Report Chapter 7, Indian and Northern Affairs Canada—Meetin	of the Auditor General of Canada, ng Treaty Land Entitlement Obligations
We expected that Indian and Northern Affairs Canada would have developed and implemented a plan setting out explicit steps it would take to process outstanding selections and to meet commitments to reduce the processing time for treaty land entitlement selections from initial Band Council Resolution to conversion to reserve status.	Paragraph 7.20
We expected that the Department would have worked more closely with each First Nation to develop an action plan for its selections. This would include	
 ensuring that the First Nation understands the conversion process, 	
setting out timelines or schedules for key milestones in the process,	Paragraph 7.27
setting out a strategy for converting each of the selections to reserve status, and	
providing ongoing assistance to First Nations as they work to meet their responsibilities under these agreements.	
We expected that, while respecting legislation and statutes, the Department would have	
issued revised guidance that sets out criteria for departmental officials to follow when carrying out environmental reviews, with specific time frames and that allows for discretion on the part of personnel to determine whether updates are necessary;	
planned land surveys so that they are undertaken to allow selected land to be converted to reserve status in a timely manner; and	Paragraph 7.36
developed a coordinated strategic plan so that the required environmental reviews and land surveys do not hold up conversion of land to reserve status.	
Ve expected that the Department would have worked with First lations to assist them in their efforts to resolve third-party interests. This includes	
building on initial efforts, and identifying and educating stakeholders that typically have third-party interests and educating them on what treaty land entitlement involves and how it affects them;	Paragraph 7.46
identifying systemic barriers to resolving recurring third-party interests and providing information to First Nations on possible strategies and actions to address them; and	
encouraging the use of dispute resolution mechanisms set up under treaty land entitlement agreements to help resolve third-party interests.	

Criteria	Sources
Departmental response to November 2005 Report of t Chapter 7, Indian and Northern Affairs Canada—Meeting 1	he Auditor General of Canada, Treaty Land Entitlement Obligations
We expected that the Department would have developed and implemented a consistent approach to ensure that its land selection files are properly organized and contain documentation required to facilitate conversion.	Paragraph 7.59
We expected that the Department would have developed a strategic management plan that outlines how it will manage its operations to process selections within a reasonable period of time. We expect the strategic plan to	
 include a projection of the ongoing workload (in terms of selections in process and selections expected in the future); 	Paragraph 7.60
 set out how the Department will process remaining selections, which are often complex; 	
set out resources required (people and financial resources); and	
 track the information needed to better plan and report results of its work. 	
We expected that the Department would have	
 taken steps to ensure that treaty land entitlement data are complete and accurate; 	
 developed and implemented a file-tracking system that can provide accurate information on results achieved (for example, number of acres selected, number of acres converted) and that is designed to flag barriers and risks to individual files so that remedies may be introduced and files can be completed in a timely and efficient fashion; and 	Paragraph 7.65
 regularly provided information needed to process selections to those involved in the process, including entitlement First Nations and provincial governments. 	

Management reviewed and accepted the suitability of the criteria used in the audit.

Audit work completed

Audit work for this chapter was substantially completed on 12 September 2008

Audit team

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For information, please contact Communications at 613-995-3708 or 1-888-761-5953 (toll-free).

Appendix List of recommendations

The following is the recommendation found in Chapter 4. The number in front of the recommendation indicates the paragraph where it appears in the chapter. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation

Response

Conversion of lands to reserve status

4.58 Indian and Northern Affairs
Canada should develop and implement
an action plan that sets out how it plans
to convert lands to reserve status. In
the plan, the Department should clearly
identify its next steps, responsibilities,
and timelines for actions for each land
selection that is to be converted to
reserve status. Specifically, the action
plan should include details on

- the Department's commitment to help First Nations resolve third-party interests,
- the way data integrity issues will be resolved, and
- the Department's plan for developing a consistent file structure to better monitor the status of treaty land entitlement selections. (4.22–4.57)

Canada is committed to honouring its lawful obligations to First Nations through the resolution of treaty land entitlements. Since the 2005 audit, Indian and Northern Affairs Canada has made great strides in the conversion of land to reserve status, with more than 3·15,000 acres being converted in Manitoba and Saskatchewan, representing a 42 percent increase in three years. Additionally, Indian and Northern Affairs Canada has improved the coordination of environmental assessments and land surveys of selected land and has worked closely with First Nations to develop future plans to convert outstanding selections.

Indian and Northern Affairs Canada agrees with the recommendation and commits to an action plan that sets out next steps, responsibilities, and timelines for the process by which land selected is to be converted to reserve status. The action plan will include details on how the Department intends to help First Nations resolve third-party interests and how data integrity issues will be resolved as well as on the development of a consistent file process to monitor the status of treaty land entitlement selections.



Status Report of the Auditor General of Canada to the House of Commons—2009

Main Table of Contents

	Main Points—Chapters 1 to 5 Appendix
Chapter 1	National Security: Intelligence and Information Sharing
Chapter 2	Governor in Council Appointments Process
Chapter 3	Auditing Small and Medium Enterprisés—Canada Revenue Agency
Chapter 4	Treaty Land Entitlement Obligations—Indian and Northern Affairs Canada
Chapter 5	Passport Services—Passport Canada

Message from the Auditor General of Canada





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2009



Status Report
of the
Auditor General of Canada
to the House of Commons

Chapter 5
Passport Services—Passport Canada



Office of the Auditor General of Canada



2009



Status Report of the Auditor General of Canada to the House of Commons





The 2009 Status Report of the Auditor General of Canada comprises a Message from the Auditor General of Canada, Main Points—Chapters 1 to 5, an appendix, and five chapters. The main table of contents for the Report is found at the end of this publication.

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Chapter

5

Passport Services
Passport Canada

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set On the audit work in this chapter was conducted in accordance with the standards for assurance engagements set On the audit work in this chapter was conducted in accordance with the standards for assurance engagements set On the audit work in this chapter was conducted in accordance with the standards for assurance engagements set On the audit work in this chapter was conducted in accordance with the standards for assurance engagements set On the audit work in this chapter was conducted in accordance with the standards for assurance engagements set On the audit work in this chapter was conducted in accordance with the standards for assurance engagements set On the audit work in this chapter was conducted in accordance with the standards for assurance engagement set On the audit work in this chapter was conducted in accordance with the standards for assurance engagement set On the audit work in this chapter was conducted in accordance with the standards for a set of the standards fo
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or our audits, we also draw upon the standards and practices of other disciplines.

Table of Contents

Main Points	1
Introduction	5
Background Effects of new rules in the United States What we found in 2005 and 2007 Events since 2007 Focus of the audit	5 6 8 8
Observations and Recommendations	9
Identifying corrective actions Passport Canada has identified areas for improvement	9
Building operational capacity	9
The Agency upgraded and expanded physical operations and access Internal reporting and tracking have improved The Agency has streamlined and modernized the process for issuing passports Staffing levels have increased The Agency is monitoring identified actions	9 10 11 11 12
Forecasting	12
The Agency has developed a new model for demand forecasting	12
Communicating with Canadians	12
The Agency is informing Canadians of phase II in advance	12
Planning for contingencies	14
Detailed contingency planning is still under development	14
Conclusion	16
About the Audit	18
Appendix	
List of recommendations	20





Passport Services Passport Canada

Main Points

What we examined

Passport Canada is a special operating agency reporting to Parliament through the Minister of Foreign Affairs. It issues Canadian passports and other travel documents that are critical to travel across international borders.

Our February 2007 Status Report followed up on Passport Canada's progress in implementing recommendations from our 2005 audit of the Agency. Our audit work for that report was completed well before the United States' Western Hemisphere Travel Initiative (WHTI) came into effect in January 2007, requiring Canadians to carry a valid passport when crossing into the US by air. However, we did look at how Passport Canada was preparing for this initiative, and we noted that most local offices did not have a formal contingency plan in place to handle unexpected increases in the demand for passports.

In fact, in the 60 days between the formal US announcement of the initiative in November 2006 and the January 2007 effective date, Passport Canada was overwhelmed by passport applications—more than 505,700 applications in January 2007 alone, a 47 percent increase over the previous month and the equivalent of about 23,000 applications a day. As a result, there were significant delays in the processing of applications; waiting times at Passport Offices and the time it took for the call centre to answer phone calls also increased significantly. Following a hearing on the matter, the House of Commons Standing Committee on Public Accounts issued a report that criticized the Agency's planning for the surge in applications and asked for a plan detailing how Passport Canada would prepare for a second surge expected before June 2009, when the requirement for a passport will extend to Canadians entering the US by land and sea.

For this Status Report, we assessed whether Passport Canada has made satisfactory progress in implementing actions and developing contingency plans to prepare for any rise in the volume of passport applications leading up to 1 June 2009. We did not look at other areas covered in our 2007 Report; we had reported that the Agency's progress in those areas was satisfactory.

Why it's important

As the Public Accounts Committee's report noted, Passport Canada's inability to cope with the first surge in applications meant that Agency employees were overwhelmed and overworked; it also led to inconvenience and frustration for many Canadians, whose travel plans may have been delayed or cancelled. Passport Canada needs to be able to provide Canadians with passports according to its own service standards and be able to respond when demands increase, which is expected to occur as passports become a requirement for travellers entering the US by land and sea as of 1 June 2009.

What we found

- Passport Canada has made satisfactory progress in implementing actions to correct the passport processing problems it encountered in 2007 and in developing contingency actions should demand exceed its current capacity, although improvements are still needed. It carried out two internal "lessons learned" exercises, through which it determined the causes of problems experienced with the surge in demand during 2007 and identified areas for improvement.
 - The Agency has taken substantial actions to increase its capacity by opening a new processing and printing plant in Gatineau, Quebec, for mail-in applications—the main source of backlogs during the first phase of WHTI; upgrading and expanding regional offices; and replacing aging printers at another printing centre, increasing its passport printing capacity there. It has also added 76 receiving agents to its existing network who review passport applications, considerably broadening access to passport services, especially in rural, remote, and northern locations.
 - Passport Canada took steps to streamline the processing of walk-in applications. For example, it defined critical steps, roles, and responsibilities, and altered the workflow to have applications screened for proper documentation and complete information before going to passport officers, allowing them to focus on their critical role in determining passport entitlement. The Agency has also undertaken a major communications campaign encouraging Canadians to apply for passports well before the US deadline. Its aim is to avoid a last-minute rush and also to spread the increased demand over a longer period. It also improved internal reporting to better monitor the number of applications processed centrally and in its 33 local offices across Canada.
 - The Agency has a broad contingency plan that includes several
 actions, the majority of which are aimed at increasing its operational
 capacity, should that become necessary. It has identified actions that
 will be triggered by changes such as excessive lineups or delays in

standard turnaround times. At the time of our audit, however, detailed planning was still underway and, in our opinion, critical gaps remained. For example, the Agency had not determined to what extent each contingency action would increase its operational capacity. Nor had it determined at what level of demand (number of applications received) it should initiate the actions, especially those with longer lead times such as hiring additional personnel. In addition, the Agency had not specified who has the authority and the responsibility to initiate contingency actions.

The Agency has responded. The Agency agrees with all of our recommendations. Its detailed responses follow each recommendation throughout the Chapter.

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Introduction

Background

Special operating agency—An agency within a government department that has greater management flexibility in return for certain levels of performance and results.

- **5.1** Passport Canada was established in 1990 as a special operating agency that reports to the Minister of Foreign Affairs. Its mandate is to issue travel documents, including Canadian passports that are needed for international travel. The familiar 24-page blue passport accounts for more than 98 percent of the documents the Agency issues.
- **5.2** As of 12 September 2008, Passport Canada had 2,781 full-time equivalent positions. It provides passport services at 33 local offices, mostly in major Canadian cities. As of 16 September 2008, Passport Canada was also providing passport services through receiving agents in 56 Canada Post outlets and 118 Service Canada centres, which serve rural and remote areas. Receiving agents receive passport applications, review them to ensure that the documents are in order, and forward them to Passport Canada for processing. Passport applications can be submitted in person to local offices or receiving agents; they may also be submitted to Passport Canada by mail or through members of Parliament. About 80 percent of all passport applications are submitted in person to local offices (a process known as "walk-ins").
- 5.3 Passport Canada operates under a revolving fund and, in the 2007–08 fiscal year, collected more than \$289 million in revenues. It uses a forecasting model to estimate the number of passport applications it expects to process, to establish budgets for upcoming fiscal years, and to predict production needs. In June 2007, Passport Canada received a one-time investment of \$55 million from the Government of Canada. This funding was to develop the operational capacity Passport Canada needed to address both an expected increase in demand for passports and the backlog of passport applications created by the new entry requirements in the United States (see paragraphs 5.5 to 5.8).
- 5.4 Passport Canada is committed to delivering reliable, consistent, and accessible services to Canadians everywhere. To this end, it has established a number of non-binding operational service standards. For example, it expects to process walk-in applications within 10 days of receipt, and mail-in applications within 20 days. In meeting these standards, Passport Canada must cope with wide variations in the demand for passports from month to month. Peak demand occurs from

Revolving fund—A fund provided for a particular purpose that is periodically replenished by transfers from other funds or, as in this case, by user fees.

November to March. As well, the overall demand for passports has steadily increased in recent years. The number of passports issued in the 2007–08 fiscal year was more than twice the number issued five years earlier (Exhibit 5.1).

Exhibit 5.1 There has been a significant increase in demand for passport services since 2001-02

Fiscal year	Number of travel documents issued	Percentage increase over previous year
2001-02	2,023,000	N/A
2002–03	2,279,000	12.7
2003–04	2,624,000	15.1
2004–05	2,756,000	5.0
2005–06	3,183,000	15.5
2006–07	3,669,000 15	
2007-08	4,838,000	31.9

Numbers and percentages have been rounded

Source Passport Canada Central Index

Effects of new rules in the United States

- Terrorism Prevention Act, which required all travellers from western hemisphere countries, including Canadian and American citizens, to have a valid passport or approved travel document to enter the United States. Under this Act, in 2005, Congress announced the Western Hemisphere Travel Initiative (WHTI), which proposed rolling out new passport rules in two phases. Under WHTI phase I, Canadians arriving in the United States by air would require a valid passport or approved travel document as of 23 January 2007. Final confirmation of the phase I deadline was announced on 24 November 2006, leaving only 60 days for Passport Canada to prepare for the first deadline. Under WHTI phase II, travellers arriving by land or sea will require a valid passport as of 1 June 2009.
- 5.6 During implementation of WHTI phase I, Passport Canada received an unprecedented number of passport applications from Canadians requiring passports to meet the new rules. Much of this increase happened during the last three months of the 2006–07 fiscal year, the Agency's traditional peak period. In January 2007 alone, Passport Canada received more than 505,700 applications, a 47 percent

increase from the previous month and equal to about 23,000 passport applications per day. By May 2007, Passport Canada had a backlog of approximately 199,000 unprocessed applications at its mail-in processing centre.

Canada. Its 2006–07 Annual Report stated that it was unable to meet the demand within its published service standards (Exhibit 5.2). Its offices, management, and staff were strained by the increased volume; they recorded more than 130,000 hours of overtime in March 2007 alone. As a result of this crisis, many Canadians encountered delays in receiving their passports. Lack of space to accommodate waiting clients created lineups snaking outside buildings and onto sidewalks. The situation was covered extensively in national and regional media and Passport Canada was heavily criticized. The Agency also received many complaints about its service delivery. At the end of this audit, Passport Canada reported that it was meeting its service standards.

Exhibit 5.2 During Western Hemisphere Travel Initiative (WHTI) phase I, Passport Canada did not meet its own service standards because of the surge in demand

Type of service	Service standard	Performance between December 2006 and March 2007
Walk-in applications	95 percent or more passports delivered within 10 days	Only 37.6 percent of walk-in applications met the service standard
Mail-in applications	95 percent or more passports delivered within 20 days	Only 16.7 percent of mail-in applications met the service standard
In-person client wait times	75 percent or more clients wait less than 45 minutes	Only 45 percent of in-person clients were served within the service standard
Percentage of calls answered within five minutes	95 percent or more calls answered within five minutes	Only 11 percent of calls were answered within the service standard

Source: Passport Canada Annual Report 2006-07

5.8 As of 1 September 2008, nearly 52 percent of Canadians held a passport (56 percent of adults and 38 percent of children), although there were significant variations from province to province. In its August 2008 update, Passport Canada forecast a demand for 4.7 million passport applications in the 2008–09 fiscal year and 6.1 million passport applications in the 2009–10 fiscal year. It expects another surge in

demand as Canadians apply for passports to meet the WHTI phase II deadline of 1 June 2009, particularly in communities near the United States border and in urban areas like Montréal, Quebec, Moncton, and Halifax, where the proportion of residents holding a passport is currently below the national average.

What we found in 2005 and 2007

5.9 In our April 2005 Report, Chapter 3, we reported that Passport Canada was struggling to meet expectations for better security and increased demands for service. Our February 2007 Status Report, Chapter 5, assessed the progress Passport Canada had made toward addressing our recommendations and found it to be satisfactory. The focus of the two audits was primarily on matters related to security. While not the subject of a new recommendation, at the time of our 2007 audit, WHTI phase I was on the horizon and we noted our concern about Passport Canada's ability to deal satisfactorily with surges in demand for passports.

Events since 2007

5.10 The WHTI phase I experience clearly indicated that phase II is a potential risk for Passport Canada. Parliamentarians were concerned about Passport Canada's ability to meet service expectations and to cope with rising demand. As a result, the House of Commons Standing Committee on Public Accounts (PACP) asked Passport Canada to present it with a plan by 30 September 2008 so it could be assured that the Agency is prepared to deal with the expected surge in passport applications stemming from the second phase of WHTI. PACP received a response from the government on 6 June 2008.

Focus of the audit

- 5.11 This audit did not follow up on security-related issues raised in our April 2005 Report since these were reported on in the February 2007 Status Report. In response to concerns raised by Canadians, the Auditor General, and the PACP, this follow-up audit assessed Passport Canada's progress in implementing actions and developing contingency plans to address the anticipated surge in passport applications with WHTI phase II. We examined whether Passport Canada can demonstrate that it has
 - assessed the problems encountered during WHTI phase I,
 - identified adequate actions to address the increased demand for passports that will stem from WHTI phase II, and

- put processes in place to monitor the implementation of those actions.
- 5.12 More details on the audit objective, scope, approach, and criteria are in the **About the Audit** at the end of this chapter.

Observations and Recommendations

5.13 At the time of our audit, Passport Canada was in transition from being reactive to proactive, turning its attention from crisis management to more carefully planning for future demand and public expectations.

Identifying corrective actions

Passport Canada has identified areas for improvement

- 5.14 We expected Passport Canada to have identified the factors that contributed to the crisis related to the Western Hemisphere Travel Initiative phase I, as described in paragraph 5.7. We found that Passport Canada started this process in early 2007. In October 2007, the Agency held two internal conferences with managers and staff from local offices, where it identified the following causes of the crisis and areas for improvement:
 - insufficient processing capacity and lack of physical space for walk-in applicants,
 - a need for better production processes for passport applications,
 - long lead times to hire new employees when the sudden increase in demand occurred,
 - an imprecise model for forecasting demand,
 - · lack of communication with Canadians, and
 - lack of contingency plans.

Building operational capacity

The Agency upgraded and expanded physical operations and access

5.15 We expected Passport Canada to have planned and taken actions to address the anticipated surge in passport applications associated with the WHTI phase II deadline. We found that Passport Canada has increased its level of preparedness and addressed most of the difficulties experienced during the Western Hemisphere Travel Initiative phase I. Passport Canada believes these actions will allow it to respond more quickly and effectively to the expected increases in passport applications.

- 5.16 One of the key contributing factors Passport Canada identified was insufficient capacity to handle the increased number of passport applications. In June 2007, the Agency sought and received a one-time capital investment of \$55 million from the Government of Canada that would increase its operational capacity. At the time of our audit, it had spent about \$31.5 million of this funding, mostly to build and equip a new mail-in processing and printing centre in Gatineau, Quebec, which opened in January 2008. With this new facility, Passport Canada aims to effectively manage the high volume of mail-in applications—a type of service that was particularly overwhelmed during WHTI phase I.
- 5.17 Passport Canada has also replaced printers at its Mississauga, Ontario, printing centre, thereby increasing that site's printing capacity. Printers at the new Gatineau centre are expected to go through a similar upgrade in the 2008–09 fiscal year. As well, Passport Canada has upgraded and expanded many of its local offices.
- **5.18** From April 2007 to the end of our audit, Passport Canada had added 76 receiving agents to its existing network of receiving agents. This considerably broadens Canadians' access to passport services, especially in border areas and rural, remote, and northern locations. Passport Canada believes that using receiving agents helps reduce pressure on local offices and mail-in operations.

Internal reporting and tracking have improved

- 5.19 When the WHTI phase I surge began, Passport Canada was limited in its ability to monitor the demand for passport applications and processing times at its local offices and its mail-in centre. This severely constrained its ability to react to shifting demand and to manage the distribution of work. In response to the initial challenges experienced in WHTI phase I, Passport Canada developed and refined its internal reporting system. This has allowed staff to closely monitor on a day-to-day basis various key operational indicators such as the number of passport applications processed at its mail-in centre in Gatineau and at its 33 local offices across Canada. Passport Canada expects that this will improve its ability to meet the service standards for passport delivery and to make the best use of its network by, for example, shifting passport applications from busy to less busy sites.
- **5.20** Passport Canada is implementing an electronic tracking system at the Gatineau mail-in centre. This system will track applications from the time they enter the facility to the time when a passport has been produced and is ready to be mailed. The Agency expects this new system to provide more accurate statistics on production times for passports.

Process for issuing passports—A process that involves seven steps: pre-screening, data entry, entitlement, data verification, production, quality control, and release.

The Agency has streamlined and modernized the process for issuing passports

- 5.21 Passport Canada has improved the process for issuing passports by streamlining several of the procedures it uses to process applications. Passport officers play a key role in processing passport applications. They examine and verify data, documents, and photos, and they correct data entries and interview applicants, as necessary. They make entitlement decisions based on the information they get from applicants, using the Agency's policies and procedures. According to Passport Canada, when WHTI phase I occurred, passport officers in local offices were generally processing complete applications from start to finish, and they were performing non-critical tasks. Now, as needed, a higher degree of application screening happens before an application reaches them. This has allowed passport officers to focus on their critical role in passport entitlement. Passport Canada has also acted to prevent lineups in local offices by partially processing passport applications during busy periods of the day and completing them during less busy periods.
- **5.22** Passport Canada adopted a new and simplified process for the renewal of existing passports. If eligible, applicants who are renewing their passports can now submit a shorter and simpler application form, current photos, and their current passport. The Agency no longer requires proof of citizenship or certification by a guarantor. This simpler renewal process should allow Passport Canada to process more passport applications in the same time frame.
- 5.23 During WHTI phase I and until quite recently, Passport Canada used manual procedures to enter data from application forms. It is now in the process of introducing a new data entry system for applications, which should reduce the amount of time spent entering client data. Certain application forms available online now feature a barcode that contains fields for information (surname, first name, date of birth, place of birth, and so on). Applicants type information into a field that captures it and automatically creates a barcode. After printing the form, applicants submit it to Passport Canada (in person or by mail) and the information is scanned into a computer directly from the bar code.

Staffing levels have increased

5.24 In the 2007–08 fiscal year, Passport Canada added new employees, more than 700 after attrition, to cope with the growing demand for passports. It also completed a recruitment process that identified a pool of more than 1,000 candidates, of which about 270 would qualify to become passport officers. This type of "pool" recruitment allows

Passport Canada to fill numerous positions rapidly while still respecting the 10-week period needed to train passport officers. It can reduce this training period if candidates are internally promoted.

The Agency is monitoring identified actions

5.25 We expected that Passport Canada would have a process in place to monitor actions it has taken to address the anticipated surge in passport applications. We found that Passport Canada is using various means to closely monitor how identified actions are being implemented. For example, it has periodically reported to the Treasury Board of Canada Secretariat on projects funded by the \$55-million investment aimed at increasing operational capacity. These reports have provided financial information on a project-by-project basis. At the time of this audit, the Agency had spent \$31.5 million and was seeking the remaining \$23.5 million from the Treasury Board. Passport Canada also indicated that it is monitoring the effect of changes made to its production processes so it can determine whether those changes have resulted in improvements.

Forecasting

The Agency has developed a new model for demand forecasting

- 5.26 Passport Canada forecasts future demand for passports so it can set its budget for the next fiscal year (balancing projected revenues and expenditures) and adjust its production capacity by hiring, redeploying, or laying-off casual and term staff. In April 2006, the Agency estimated that from the 2005–06 fiscal year to the 2006–07 fiscal year, demand would grow by approximately 6.6 percent. However, the Agency reported a 22 percent increase. Given these numbers, it significantly underestimated demand.
- 5.27 In February 2008, Passport Canada launched a new forecasting model. Although we did not audit the forecasting model, the Agency believes it will be more accurate because it is based on a mix of both observed prior trends and current data. Using this model, it produced new estimates of passport applications for the next five years (Exhibit 5.3).

Communicating with Canadians

The Agency is informing Canadians of phase II in advance

5.28 Since the Western Hemisphere Travel Initiative phase I deadline was announced only 60 days before the effective date, Passport Canada and Canadians had limited time to react. The House of Commons Standing Committee on Public Accounts criticized Passport Canada

Exhibit 5.3 Passport Canada produced new estimates of demand for passport services.

Fiscal year ended March 31	Number of passport applications expected 4,730,226			
2008-09				
2009–10	6,098,863			
2010–11	4,675,959			
2011–12	4,740,189			
~2012–13	4,989,881			

Source: Passport Canada Demand Forecast

for failing to inform Canadians about its inability to meet published service standards. For these reasons, Passport Canada considers communication a key part of its current strategy.

- 5.29 Communications campaign. Passport Canada launched a major communications campaign in the summer 2008, developed in consultation with other federal agencies. The campaign encouraged Canadians to apply for passports well before the WHTI phase II deadline in order to avoid a last-minute rush and to even out demands on the Agency. It began with advertisements in about 80 daily and weekly newspapers and was followed with radio spots in Alberta, Manitoba, Ontario, Quebec, and New Brunswick. The advertisements targeted people living in border areas where fewer Canadians have a passport. Finally, in early September 2008, more than 5.7 million notices were mailed to Canadians living within 150 kilometres of access roads that link Canada and the United States. Passport Canada planned to conduct an evaluation in late 2008 to determine how effective the campaign had been.
- **5.30** Passport clinics. Passport Canada has also improved its outreach activities. In 2007, it held 54 passport clinics where staff travelled to selected communities to provide people with information and to accept passport applications. In 2008, Passport Canada expected to hold clinics in 44 communities.
- **5.31** Revamped website. Passport Canada revamped and launched a new website in mid-December 2007. The new website is designed to reduce calls to call centres by posting key topics on the homepage and highlighting key initiatives such as the simpler renewal process. It also posts current processing times for passport applications. This allows Canadians to plan in advance—a measure that was not in place during WHTI phase I.

Planning for contingencies

Detailed contingency planning is still under development

- 5.32 Based on actions it has taken to increase operational capacity and efficiency and to better predict and moderate the demand for passports, Passport Canada believes it will be able to meet the demand it has forecast. However, the Agency does not have unlimited capacity and, despite its best planning efforts, there is a risk of an unexpected increase in passport applications. We therefore expected that it would have developed a contingency plan to provide Canadians with timely and reliable service and to avoid the problems that occurred during Western Hemisphere Travel Initiative phase I.
- Passport Canada has developed a high-level contingency plan that includes a range of potential actions, the majority of which are aimed at increasing its operational capacity, should that become necessary. Each potential action has an associated "trigger." For example, if lineups at local offices are too long, opening hours may be extended. Similarly, if the Agency has printing delays at its two major printing centres, it may send passports to other Passport Canada offices for printing (some local offices have printing capabilities). And, if its service standards are exceeded by a significant margin nationally, it may implement evening shifts and weekend overtime or hire new staff. Some of these actions would be triggered by physical monitoring of sites—for example, observing lineups; however, most would be triggered when established service standards are exceeded by 5, 10, 15, or 25 days. The Agency can implement some of these actions on relatively short notice, while it will require longer lead times for others such as hiring and training new employees.
- 5.34 At the time of our audit, detailed planning and communications for most of these actions were still underway. In our opinion, critical gaps must be filled. First, Passport Canada had not yet determined by how much each individual action would increase its overall operational capacity. This information is necessary to enable the Agency to more precisely match actions to increase capacity with increases in demand. Second, many of the contingency actions will be triggered after service standards have been exceeded. Passport Canada had not yet determined what level of demand (number of applications received) would trigger these actions before a problem occurs, particularly those that have longer lead times, such as hiring more staff. Third, Passport Canada had not yet specified who precisely has the authority and responsibility for launching such actions.
- 5.35 Without this information, Passport Canada cannot be sure that it will be able to respond in time and with the right corrective action to

unexpected increases in demand. Unless sound planning is in place, we are concerned that the effectiveness of some of Passport Canada's contingency actions could be undermined, and that its ability to communicate realistic expectations to Canadians could be compromised.

5.36 Recommendation. Passport Canada should complete its ongoing contingency planning by determining how much each contingency action would increase its operational capacity.

The Agency's response. Agreed.

Passport Canada agrees to complete its ongoing contingency planning through the development of rolling action plans that will be updated on a regular basis. This contingency planning will result in capacity increases in four areas: intake, processing, printing, and communication.

Passport Canada will also measure capacity gains for each contingency action through the development of various scenarios, which will account for fluctuations in the number and type of applications it receives. Should these actions be implemented, Passport Canada will closely monitor and accordingly adjust its action plans to reflect the impact of measures taken and evolving passport demand.

Deadline: End of the 2008-09 fiscal year.

5.37 Recommendation. Passport Canada should complete its ongoing contingency planning by better understanding what volume of applications would trigger the need to take certain actions, especially those that have longer lead times, such as hiring more staff.

The Agency's response. Agreed.

Passport Canada will complete its ongoing contingency planning by identifying the triggers to each contingency action. The Agency will conduct a review of the triggers, the environment, and the situation at the local, regional, and national levels on a regular basis. Triggers include, but are not limited to, longer wait times and lineups at local offices, processing times beyond what is published, printing delays, and the public's inability to access our information centres in a reasonable time.

As of November 2008, staffing is above the required level to handle the current forecasted volume. With respect to lead times for hiring, Passport Canada has a hiring pool of 1,000 candidates and the ability to hire through agencies and to train for various positions within a two-week time frame. Passport Canada has in place a continuous hiring process through an arrangement with the Public Service Commission of Canada.

Deadline: End of December 2008 / Ongoing

5.38 Recommendation. Passport Canada should complete its ongoing contingency planning by identifying roles, responsibilities, and authorities for launching contingency actions.

The Agency's response. Agreed.

Passport Canada will put in place a tactical response team that will ensure adequate monitoring and reporting of the volumes throughout all service channels and that will be in a position to make timely and valuable recommendations to the higher management team.

The Agency has identified authorities for launching contingency actions. The Chief Operating Officer is responsible for launching most of the contingency actions, while some other minor actions will be launched locally. Passport Canada is also ready to seek the authority of the Minister of Foreign Affairs to implement exceptional specific measures should the situation warrant it.

Deadline: End of December 2008

Conclusion

- 5.39 Overall, Passport Canada has demonstrated satisfactory progress in implementing actions and developing contingency plans to better prepare itself for the increase in passport applications (Exhibit 5.4).
- 5.40 We found that Passport Canada has developed an extensive response to increase its level of preparedness, mainly by opening a new processing and printing centre for mail-in applications in Gatineau, Quebec, and by launching a major communications campaign that encourages Canadians to apply for passports well before the Western Hemisphere Travel Initiative phase II deadline. Passport Canada has also streamlined its processes to improve workflow and improved its internal reporting, which should allow for better distribution of workload among local offices.

Exhibit 5.4 Progress on preparing for Western Hemisphere Travel Initiative (WHTI) phase II

Issue	Progress	
The Auditor General and the House of Commons Standing Committee on Public Accounts have expressed concerns about Passport Canada's readiness to deal satisfactorily with a sudden and significant rise in the number of passport applicants in response to the WHTI. (2007 Status Report of the Auditor General, Chapter 5, paragraphs 5.63 and 5.64; and the Ninth Report of the Standing Committee on the Public Accounts.)	Satisfactory	
We assessed whether Passport Canada has demonstrated that it has implemented actions and developed contingency plans in preparation for the expected rise in demand for passport applications leading up to 1 June 2009.		

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the issue was raised.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the issue was raised

5.41 The Agency's high-level contingency plan includes actions that will be triggered by events such as long lineups or delays in standard turnaround times. At the time of our audit, detailed planning and communication for most of these actions were still under way. In our opinion, critical gaps must be filled. Passport Canada had not yet quantified the additional capacity that could result from these contingency actions. Nor had it yet identified what volume of applications would trigger the need to deploy certain actions. Finally, it had not yet specified who precisely has the authority and the responsibility to launch such actions.

About the Audit

Objective

This follow up malit assessed whether P separt Car. It has made satisfactory progress in implementing actions and developing continuous applications for the expected rise in passport applications leading up to 1 June 2009.

Scope and approach

We examined the analysis that Passport Canada performed after its experience in managing the unprecedented increase in passport applications that occurred during implementation of the Western Hemisphere Travel Initiative (WHTI) phase I. The audit also looked at the actions that Passport Canada identified and implemented to address the next anticipated surge in passport applications during WHTI phase II. The audit did not include security, eligibility, or other matters addressed in the April 2005 Report or the February 2007 Status Report.

We interviewed management and staff at the Agency's headquarters and reviewed documents to obtain information on actions taken to address the next anticipated surge in passport applications.

Criteria

Listed below are the criteria that were used for this audit and their sources.

Criteria	Sources			
We expected Passport Canada to be able to demonstrate that it assessed the key factors of the challenges it experienced in relation to the Western Hemisphere Travel Initiative (WHTI) phase I deadline of 23 January 2007 for air travel.	Treasury Board of Canada Secretariat, Integrated Risk Management Framework (2001), Element 3—Practising Integrated Risk Management—A Common Risk Management Process—Identifying Issues, Setting Context (step 1)			
We expected Passport Canada to be able to demonstrate that it identified adequate actions to address the anticipated surge in passport applications due to the WHTI phase II deadline of 1 June 2009 for land and sea travel.	Treasury Board of Canada Secretariat, Integrated Risk Management Framework (2001), Element 3—Practising Integrated Risk Management—A Common Risk Management Process—Selecting a Strategy (step 7)			
We expected Passport Canada to be able to demonstrate that it has implemented planned actions and has processes in place to monitor their implementation.	Treasury Board of Canada Secretariat, Integrated Risk Management Framework (2001), Element 3—Practising Integrated Risk Management—A Common Risk Management Process—Implementing the Strategy and Monitoring, Evaluating and Adjusting (steps 8 and 9)			

Audit work completed

Audit work for this report was substantially completed on 19 September 2008.

Audit team

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For information, please contact Communications at 613-995-3708 or 1-888-761-5953 (toll-free).

Appendix List of recommendations

The following is a list of recommendations found in Chapter 5. The number in front of the recommendation indicates the paragraph where it appears in the chapter. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Response Recommendation Planning for contingencies Agreed. 5.36 Passport Canada should complete its ongoing contingency planning by Passport Canada agrees to complete its ongoing contingency determining how much each planning through the development of rolling action plans that contingency action would increase its will be updated on a regular basis. This contingency planning operational capacity. (5.32-5.35) will result in capacity increases in four areas: intake, processing, printing, and communication. Passport Canada will also measure capacity gains for each contingency action through the development of various scenarios, which will account for fluctuations in the number and type of applications it receives. Should these actions be implemented, Passport Canada will closely monitor and accordingly adjust its action plans to reflect the impact of measures taken and evolving passport demand. Deadline: End of the 2008-09 fiscal year. Agreed. Passport Canada should complete its ongoing contingency planning by Passport Canada will complete its ongoing contingency planning better understanding what volume of by identifying the triggers to each contingency action. The applications would trigger the need to Agency will conduct a review of the triggers, the environment, take certain actions, especially those and the situation at the local, regional, and national levels on a that have longer lead times, such as regular basis. Triggers include, but are not limited to, longer wait hiring more staff. (5.32–5.35) times and lineups at local offices, processing times beyond what is published, printing delays, and the public's inability to access our information centres in a reasonable time. As of November 2008, staffing is above the required level to handle the current forecasted volume. With respect to lead times for hiring, Passport Canada has a hiring pool of 1,000 candidates and the ability to hire through agencies and to train for various positions within a two-week time frame. Passport Canada has in place a continuous hiring process through an arrangement with the Public Service Commission of Canada.

Deadline: End of the 2008 / Ongoing

Recommendation

5.38 Passport Canada should complete its ongoing contingency planning by identifying roles, responsibilities, and authorities for launching contingency actions. (5.32–5.35)

Response

Agreed.

Passport Canada will put in place a tactical response team that will ensure adequate monitoring and reporting of the volumes throughout all service channels and that will be in a position to make timely and valuable recommendations to the higher management team.

The Agency has identified authorities for launching contingency actions. The Chief Operating Officer is responsible for launching most of the contingency actions, while some other minor actions will be launched locally. Passport Canada is also ready to seek the authority of the Minister of Foreign Affairs to implement exceptional specific measures should the situation warrant it.

Deadline: End of December 2008



Status Report of the Auditor General of Canada to the House of Commons—2009

Treaty Land Entitlement Obligations—Indian and Northern Affairs Canada

Main Table of Contents

Chapter 4

Main Points—Chapters 1 to 5
Appendix

Chapter 1 National Security: Intelligence and Information Sharing

Chapter 2 Governor in Council Appointments Process

Chapter 3 Auditing Small and Medium Enterprises—Canada Revenue Agency

Message from the Auditor General of Canada

Chapter 5 Passport Services—Passport Canada











